NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service
Washington, D.C.

S. Hrg. 101-126, Pt. 11

FEDERAL GOVERNMENT'S RELATIONSHIP WITH AMERICAN INDIANS

HEARINGS

BEFORE THE

SPECIAL COMMITTEE ON INVESTIGATIONS

OF THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

DEPARTMENTAL RESPONSES, TRIBAL LAW ENFORCEMENT, AND TIMBER

JUNE 8, 1989
WASHINGTON, DC

PART 11

U.S. GOVERNMENT PRINTING OFFICE
21-638 WASHINGTON : 1989

S411-38

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

SELECT COMMITTEE ON INDIAN AFFAIRS

DANIEL K. INOUYE, Hawaii, *Chairman*
JOHN McCAIN, Arizona, *Vice Chairman*

DENNIS DeCONCINI, Arizona	FRANK H. MURKOWSKI, Alaska
QUENTIN N. BURDICK, North Dakota	THAD COCHRAN, Mississippi
THOMAS A. DASCHLE, South Dakota	SLADE GORTON, Washington
KENT CONRAD, North Dakota	
HARRY REID, Nevada	

ALAN R. PARKER, *Staff Director*
PATRICIA M. ZELL, *Chief Counsel*
ERIC EBERHARD, *Minority Staff Director/Counsel*

SPECIAL COMMITTEE ON INVESTIGATIONS

DENNIS DeCONCINI, Arizona, *Chairman*
JOHN McCAIN, Arizona, *Cochairman*
THOMAS A. DASCHLE, South Dakota

KENNETH M. BALLEN, *Chief Counsel*

CONTENTS

Statements: Page

- Cutsforth, Marshall, chief, Division of Forestry, BIA, Washington, DC........ 71
- DeConcini, Hon. Dennis, U.S. Senator from Arizona, chairman, Special Committee on Investigations of the Select Committee on Indian Affairs. 1, 84
- Gill, Dexter, director, Navajo Forestry Department, Window Rock, AZ....... 54
- Haley, Robert Bruce, law enforcement administrator, Swimonish and Lummi Tribe 28
- Lujan, Manuel, Jr., Secretary, Department of the Interior 2
- Manuel, Hilda Ann, chief judge, Tohono O'Odham Judicial System........ 27
- Matt, Fred, president, Intertribal Timber Council, Pablo, MT 52
- McCain, Hon. John, U.S. Senator from Arizona, cochairman, Special Committee on Investigations of the Select Committee on Indian Affairs. 1, 83
- Miller, Samuel, chief, Division of Water and Land Resources........ 71
- Morishima, Gary, executive board member, Intertribal Timber Council, Mercer Island, WA........ 63
- Nessi, Dom, Director, Office of Indian Housing, Department of Housing and Urban Development........ 37
- Ragsdale, Pat, Acting Assistant Secretary, Indian Affairs 2
- Revell, Oliver, executive assistant director, Investigations FBI, Department of Justice........ 15
- Sampsel, Roy, president, R.H.S. Resource Consultants, Portland, OR 51
- Spitz, James, forests consultant, Warm Spring and Yakima Tribes, Bend, OR........ 67
- Trosper, Ronald, tribal economist, Pablo, MT 58

APPENDIX

Prepared statements:

- Cutsforth, Marshall (with attachments) 162
- De La Cruz, Joseph, president, Quinalt Indian Nation (with attachments). 242
- Gill, Dexter........ 117
- Haley, Robert........ 107
- Lujan, Manuel, Jr 87
- Matt, Fred........ 115
- Miller, Sam (with attachments)........ 175
- Morishima, Gary (with attachments) 142
- Revell, Oliver 89
- Trosper, Ronald 125

Additional material submitted for the record:

- Chambers, Reid Peyton, letter to Senators DeConcini, McCain, and Daschle 260
- DeConcini, Hon. Dennis, letter from Jack Kemp........ 113

DEPARTMENTAL RESPONSES, TRIBAL LAW ENFORCEMENT, AND TIMBER

THURSDAY, JUNE 8, 1989

U.S. Senate,
Select Committee on Indian Affairs,
Special Committee on Investigations,
Washington, DC.

The special committee met, pursuant to notice, at 10:10 a.m., in room 216, Hart Senate Office Building, Hon. Dennis DeConcini (chairman of the special committee) presiding.

Present: Senators DeConcini, McCain, and Daschle.

Staff present: Kenneth Ballen, Michael J. Anderson, John Brandolino, George Brent Mickum III, Kathy Momot, and Mary Ellen Fleck.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DeConcini. The Special Committee on Investigations will come to order. We are perhaps concluding our hearings this morning. We still may find it necessary to have hearings on the Indian Health Service.

Mr. Secretary, we first would like to thank you for appearing here this morning. We have heard your prior comments supporting this committee's work, and we deeply appreciate that. We would also like to thank your Department for its cooperation with the committee; while our investigation was often intense and many times difficult, the Department of Interior remained steadfastly cooperative, no matter how painful that might have been. And we realize there was some pain there. Believe me, there was some pain here, too. That cooperation should be commended, and I hope it is a sign of future cooperation, and I trust you will share with your employees the appreciation of this committee, our staff, and the members.

Secretary Lujan, we will hear from you in just a moment, with your opening statement. Before that, I yield to my cochairman, Senator McCain.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, COCHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator McCain. Thank you, Mr. Chairman.

Mr. Secretary, I also would like to add my words of greeting to you this morning. I had the privilege of working with you in the House of Representatives. I still remember with very mixed emotions when you appointed me to be the Republican to handle Native American legislation on the Interior Committee, which began my involvement, I think it's now over 6 years ago, in Native American issues. I was aware at that time of your commitment to the issues affecting Native Americans, coming from a State where there are significant numbers of Indian tribes, which indeed run a spectrum from very wealthy and viable tribal economies to extremely poor ones, and I think the knowledge and experience you bring to your job is going to be very helpful for all of us in better understanding and addressing issues affecting Native Americans. And thank you for appearing this morning.

Thank you, Mr. Chairman.

Senator DECONCINI. The Senator from South Dakota.

Senator DASCHLE. I have no statement.

Senator DECONCINI. Mr. Secretary, you may proceed with any statement you have and then we will go over some of our preliminary findings with you and get your observations and comments. Do you want to introduce your assistant?

STATEMENT OF MANUEL LUJAN, JR., SECRETARY, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY PAT RAGSDALE, ACTING ASSISTANT SECRETARY, INDIAN AFFAIRS

Mr. LUJAN. Thank you. Mr. Chairman, first let me introduce Pat Ragsdale, whom you know, the Acting Assistant Secretary for Indian Affairs.

Senator DECONCINI. We do, Mr. Secretary, excuse me for interrupting. I want to pay particular thanks to Mr. Ragsdale. He has helped the committee immensely. He's been responsive to us. We've had some difficulties now and then, but not with Mr. Ragsdale. He has always been there to cooperate, and steadfastly defend the Department, by the way.

Go ahead, Mr. Secretary.

Mr. LUJAN. Thank you very much, Mr. Chairman. And I might say, this is the first time I have come to testify in this new Hart Building. It's really quite impressive.

Senator DECONCINI. We're roughing it. [Laughter.]

Mr. LUJAN. Thank you very much, Mr. Chairman, and I do have a short opening statement.

I'm happy to appear before you this morning at your request to talk with you as a part of your continuing investigation into issues involving Federal management of Indian programs.

I have been kept generally informed, Mr. Chairman, of the proceedings and was pleased to note that during your opening hearings in January of this year, you indicated that though problems do continue to exist in Indian Country, the alleged billions of dollars of mismanagement which the Arizona Republic reported in a series of articles in the fall of 1987 were not found to be substantiated. However, these hearings will be a useful tool in improving program management.

After presenting my short opening statement today, Mr. Chairman, I will be available to answer any questions which you may have of me.

As you may know, the President and I developed an approach early this year to stewardship which directly addresses Indian tribes and Alaska Native groups. In this stewardship agenda is the following concept: Indian tribes and Alaska Native groups—through our commitment to the ideals of Native American self-government and self-determination, we will work with Native Americans to promote economic development, improved educational opportunities, and other measures to enhance their quality of life.

I believe by and large that the Department of Interior, the Bureau of Indian Affairs, and all other bureaus within the Department are doing a good job in carrying out the complex programs under their authorities. However, I'm sure that the Department of the Interior can do more. Your work has identified some areas where coordination of activities among some bureaus may not always be bridged properly. Further, definition of responsibilities and coordination can always be improved, as can tightening of selected internal procedures within the bureaus.

We are analyzing coordination of responsibilities from one bureau to another as related to Indian matters. This analysis will be performed by working level senior staff who are intimately involved in these issues every day. We are not going to commission new studies, with a lot of time delays, and the necessity of educating outside consultants.

With the consent of the Senate, I look forward to getting Eddie Brown on board in Indian Affairs so that the Department can benefit from his expertise and perspective born of practical field and governmental experience.

Additionally, I was pleased to respond to the recent letter from the Senate Select Committee on Indian Affairs and the Special Committee on Investigations, co-signed by Congressmen Udall and John Rhodes, III, regarding the Department's legal representation of American Indians.

In my letter I indicated that I believe the Department has no responsibility more serious than our trust responsibilities to Indians. I welcome continuing discussions about ways in which we can enhance our procedures for legal representation on these complex Indian matters. I'm moving in a deliberate and cautious manner in appointing individuals who have substantive legal credentials to critical attorney positions related to fiduciary duties to the Indian trust estate.

Today I reiterate my sincere concern about the well-being of Native Americans and their interests.

I look forward to receiving your report when it is published. I will now be happy to answer any questions that you may have.

[Prepared statement of Mr. Lujan appears in appendix.]

Senator DeConcini. Mr. Secretary, thank you very much. And as I indicated, we are putting together our report. We have some preliminary findings. The Special Committee has worked for more than nine months now. The final report will not be subject to a public hearing per se, but we know that you've been given some opportunity to review some of these findings through coordination with your staff, so I would like to proceed to outline a few findings and get your reaction for the record, Mr. Secretary.

In just eight months the Special Committee found that a majority of companies who represented themselves as legitimate Indian contractors were in fact secretly backed or controlled by non-Indian firms. These so-called Indian companies include the largest construction firms active on Indian lands, receiving Indian preferences from the Department of Housing and Urban Development, the Bureau of Indian Affairs, and Small Business Administration. In fact, the committee identified over 19 instances of fronting, most of which were actually certified by the BIA as legitimate contractors. And as a result, the benefit of Government programs designed to promote Indian economic development were in actual fact going to non-Indians.

On the other hand, Mr. Secretary, the BIA, whose responsibility it is to regulate and enforce Indian preference, has only identified two major incidents of fronting in 31 years.

So, Mr. Secretary, I guess my question is pretty obvious. Is this an acceptable record of enforcement and prevention of fraud by the BIA?

Mr. LUJAN. Mr. Chairman, I'll be very candid with you, I'm not intimately familiar with the committee's findings. I have followed what you said, and I intend to follow up on them.

I will tell you that we have about 700 Indian and Alaskan Native firms that are included in the Buy-Indian business. And I am concerned about that, Mr. Chairman. You know, any time you have a preference to a certain group, you're always going to find unscrupulous individuals who are going to try to take advantage of the system. But let me assure you that I and Mr. Ragsdale are very concerned about that. And we certainly want every effort to see that it doesn't happen.

Senator DECONCINI. Well, I think it's only fair, Mr. Secretary, for you to have an opportunity to review the facts and the record that we have before we press you to tell us what you're going to do. I think you have to appreciate and have the appreciation that we do of the significance here.

We found, for instance, that Ed Danks, the president and founder of the National Association of Indian Contractors—he testified before us here under oath that in his own group of contractors over half of the contractors were fronts, and that Jefferson Begay, an Indian contractor in Phoenix, whose books and records the committee fully reviewed—that the BIA failed to do certain things in reviewing his books. He testified that only two out of the nine Indian contractors in the Phoenix area were legitimate, and yet they were certified.

And Special Agent James Elroy from the FBI, who was assigned to us with more than 18 years of investigative experience, testified that he also found, after examining thousands of subpoenaed records and conducting interviews and depositions with committee counsel, that a majority of Indian contractors were indeed fronts.

So I guess my hope, Mr. Secretary, is that based on these findings that will ultimately come out in our final report, you will conclude that BIA has just not done its job. And this is not to exonerate and make this committee look good, but for the purpose that I know you're dedicated to, and that is to provide the economic development for Indian contractors. And that's our wish, and I presume we can count on you doing just that.

Mr. LUJAN. Yes; as a matter of fact, I've been looking at, you know, one of the suggestions that has come out of all of this, to put—since there are about 300 firms, you know, it shouldn't be too difficult to really get in and check it out. One of the suggestions is a small office—you know, not a whole big bureaucracy again, but with a proper mix of somebody that knows contracting, and legal and investigative skills. That has come out of this committee, such a recommendation. I think that's a good recommendation. I intend to follow up on that.

Senator DECONCINI. That would be good, Mr. Secretary. I know that if you do conclude that some changes have to be made, obviously, resources are a problem. Where do you find them? But it's my judgment that we're better off if we don't have economic development, or as much economic development, if we can't be sure that it's done in the manner that we want. And if it's going to be an Indian preference program, that it is just that. I don't know if you agree with that, but——

Mr. LUJAN. I most certainly do.

Senator DECONCINI [continuing]. You've had such a long experience in Congress that we have seen perhaps here some fault lays with Congress, of appropriating money but not insisting that the program be set out in terms of specifics.

I yield to Senator McCain for some questions.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Secretary, I think you share my view that the overwhelming majority of tribal governments in America are made of honest, straightforward, public spirited, hard working, dedicated men and women who are elected to run their tribes in a fashion which the members of their tribe expect of them, just like non-Indian elected officials.

At the same time there is in non-Indian areas, from time to time, corruption and people who abuse their oaths of office, so also there have been a few examples in Indian Country of corruption on the part of tribal officials.

As you are also aware, Mr. Secretary, one of the most controversial and visible parts of the hearings that we held had to do with tribal corruption. Although, I would like to emphasize again, that issue took about five percent of this committee's total time as compared to the other issues in which we involved ourselves. It may have gotten a significantly larger proportion of publicity. The fact is, it was only a small portion of the overall investigation conducted by this committee.

And in a couple of cases you also know, Mr. Secretary, we found some shocking information of what appeared to be clear violation of oaths of office, kickbacks, misuse of tribal funds, et cetera. One of the aspects that disturbed this committee in this situation was the testimony of Federal prosecutors that such conduct uncovered by the committee could be interpreted by the courts as not being in violation of current law.

So I guess what my question to you on this issue—one of my questions is whether you favor legislation that would make it a clear violation of Federal law for a tribal official to take gratuities and engage in gross conflicts of interest, as the committee found in one or two cases.

Mr. LUJAN. Yes; and let me start off by saying by we agree with you that it would be unfair to paint everybody with the same paintbrush and assume that every tribe is corrupt. Certainly there are instances of that, just like there are anywhere else. But I think we have to be very careful, as you have been saying right up front. Sure, we have some problems, but let's not just paint everybody with the same brush.

As to your——

Senator MCCAIN. Mr. Secretary, if I could interrupt——

Mr. LUJAN. Yes.

Senator MCCAIN [continuing]. I think we would agree, the overwhelming majority of tribes in America have a clear record of clean, honest government. And I think that should be made very clear. Sometimes that isn't reported by the media, and understandably so.

Mr. LUJAN. Well, having said that, and agreeing on that, there are nevertheless some problems. There may be some problems also, there probably are, in the laws that we have put together, as your question so rightly implies.

Certainly, we're for closing loopholes. The prosecutors say that there are instances where they cannot prosecute because of the law, and certainly that's their expertise and I would leave it to them. If they say that we need some changes in the law so that they can properly prosecute the individuals, that's what we ought to do. We have basically two Federal statutes, one for crimes against the tribes and one for crimes against Government programs involving Government moneys. You would think, or I would think, because I'm not a lawyer, that that would cover the waterfront. But the prosecutors seem to think that there is a deficiency, and that being the case, I would say, yes, you know, let's close up those loopholes.

Senator MCCAIN. Thank you, Mr. Secretary.

Mr. Ragsdale, as you are well aware, during the course of our investigation of the situation regarding the sale of the Big Boquillas Ranch in the Navajo Nation, you testified that the BIA had not determined whether—actually, I'm sorry, your Acting Assistant for Indian Affairs testified—that the BIA had not determined whether or not the Navajo Nation used trust funds to purchase that land.

What appropriate safeguards could we expect in the future to ensure and prevent the trust funds from being used in that manner?

Mr. RAGSDALE. Senator McCain, your question is fairly simple, but the process for tribal budgeting varies a great deal from tribe to tribe since the source of tribal monies that they use for their own programs usually is obtained both from trust funds and funds that are not taken into trust, from enterprises and other activities. So our primary responsibility is to approve the release of trust funds in accordance with a tribal budget that has been properly adopted by a tribal council or a tribal government.

With regard to the exercise of our authority, we exercise that authority as the tribe moves their budget forward and enacts it. It comes forward to the Bureau, and the Bureau's formal process for approval essentially boils down to a couple of phases of review. The first phase would be, does the tribe have enough cash on hand from the trust fund in order to support such a budget? And secondly, if they do, then we usually exercise our responsibility to try to advise the tribe that they not withdraw more than they need to maximize the principal for investment, and so on.

With regard to the various line items in a tribal budget, depending upon the size of the tribe's budget, and their operation, it runs from millions of dollars to very small amounts of dollars. Our programmatic review is essentially that we run through the budget to determine that they are legitimate tribal programs or Governmental programs, and then approve it. Once we release the money to the tribe, then the Secretary's responsibility, our authority to actually supervise the funds, is very limited. We do not audit or account for the trust funds except under extraordinary conditions.

So, the answer to your question, with respect to tribal trust funds, is that in my opinion, without checking with any of our lawyers or any of our technical people, the annual appropriations and various special acts of Congress that control trust funds would have to be amended or expanded to require closer supervision authority on the part of the Federal Government.

At the same time, and not having given this any more thought, I would think that as a policy matter in this age of self-determination, the Congress and the Executive would want to consider very seriously whether or not we would want to exercise that control over competent governments, in that we do not do such a thing with regard to most State and local governments.

Senator McCain. Thank you.

Thank you, Mr. Chairman.

Senator DeConcini. The Senator from South Dakota.

Senator Daschle. Thank you, Mr. Chairman.

Mr. Secretary, I share the view that you expressed earlier, that much of what we have learned in the hearings has failed to substantiate some of the allegations made in earlier reports that brought about the hearings in the first place. And I guess I don't feel like we have cause to be euphoric over that fact. I think that what we have learned would certainly indicate that there is a good deal in policy that we have to address in order more effectively to manage all of the resources that affect Native Americans on the reservations and policy with regard to the resources under their control.

If we come back in a couple of years and find that nothing has been done, either in the Congress or in this Administration, then most of what we've done in the last several months will have been for naught. We can't allow that to happen.

Everything that we have learned was done prior to the time you came into office, so there is absolutely no reason or cause for the Congress to cite the Bush Administration for any difficulties that may exist. But I think that in a couple of years it is going to be important for the Bush Administration and the 101st Congress to cite specific efforts made in response to what we've learned that would give us some confidence that five or ten years from now a hearing like this wouldn't uncover exactly the same thing. And I must say, I think there will be skeptics out there who will say, well, these hearings are going to come and go. And with these hearings information will have been revealed, and the fact is that nothing will have been done.

And I must admit that I share a little of that skepticism. I worry sometimes about whether the Congress is going to be able to respond effectively to the things that this committee has learned. And I'm not so sure we can. I don't know. But I do know that we won't be able to unless together we work on some of these things and we take the well-meaning statements that I've heard this morning by all of us and put some meaning to them. And I guess that's really the essence of my feeling this morning, that we have a golden opportunity to work together. It's not often we have a chance to talk like this, and I would hope that we could take what we've learned and make something of it.

In that regard, one thing that we've recommended to President Bush was that we try to coordinate all of this effort a lot more effectively. So many of the responsibilities fall outside the BIA and the Department of Interior, and if we are going to effectively coordinate them, it may take somebody in the White House itself who could take that responsibility, from the Executive Department's point of view, working with the Congress, to try to coordinate this effort more effectively, both in policy as well as the administration of these programs.

How would you feel about having somebody in the White House to coordinate all of that? Have you had the chance yet to talk with the President about this, and do you feel something like this might be warranted?

Mr. LUJAN. Well, let me answer it this way. No, I have not talked to the President about it. That trust responsibility has been placed with the Secretary of Interior. And I accept that responsibility, let me tell you. I don't know that there's any need for some other kind of negotiator or overseer in the White House over the other Departments. We have already, as a matter of fact, begun some coordination with other departments.

For example, I took a trip out through California, Arizona, and New Mexico together with the Secretary of Education, Mr. Cavazos, looking at Indian education. We're working together in trying to fulfill that responsibility together. I think we can do it that way. I don't see any need for someone outside the Department to coordinate it.

Let me further expand on your comments before the question, because I am very concerned about that myself. I was in the Congress for 20 years before coming to the Executive, and it has always been the concern. I remember receiving a letter one time from Annie Wauneka, whom both the Senators from Arizona know, in which she said that they had been studied and programmed, and all of the different adjectives that we use for different kinds of activities, and that things just didn't seem to get better. And that statement has always bothered me.

And as Secretary of Interior let me tell you that the specific things that you have found, those are the easy things to fix. I can go and put in an office to investigate and make sure that Indian-owned firms are as a matter of fact Indian-owned. You know, that's a pretty simple solution. The stories of abuse of children that came out at the committee's hearings, that again, maybe not a simple solution, but at least a solution. We have elevated that to a sensitive matter within the Department, which means that more emphasis is put on it, the training, and reporting requirements, which we are going to stiffen up.

And we have some good, good people. I've been very happy with Pat there as—Pat Ragsdale, Acting Assistant Secretary. We're bringing in Eddie Brown now, whom you know, after looking throughout the whole country, as a matter of fact, to find a guy that is sensitive, that is knowledgeable.

We both agree that the number one thing that we have to do on Indian reservations is education. That is the number one priority of the Department as far as Indian country is concerned.

Another concern is the economic development. I worry about the same things that you spoke of, that, you know, two or three years from now we have the same kind of meeting, same kind of questions coming out. I will tell you this, I will try my best to see that that does not happen. That's a big challenge. I don't know that the whole Department—together, not just me—is up to that challenge, that we can turn things around on the reservations. But we're going to give it our best.

Senator **Daschle**. Well, I certainly don't doubt your sincerity, and I know that you're bringing in some good people. But I have to tell you, I think that somebody's got to shake them up. I think somebody's got to go in there and kick some butt, you know, and really make some change. And I don't know that; I sense that, without doubting your sincerity, because I know you are sincere. You've worked in these problems twice as long as I have, three times as long as I have, so you've been at it a lot longer than I have. But I think that besides just being sincere and wanting to deal with it, I'd like to see somebody go in there and just kick butt, and really make some change. Shake them up. Do something that shows that this isn't business as usual. You know, whether it's resource management, some kind of interagency task force, there's somebody that's got to go in there and say, look, it's no longer going to be like it was. And you are in the best position to do that.

In addition to that, I'd even challenge you, just ever so slightly. I know how strong you feel about the need for education, but I've got to tell you, to say that unequivocally, it denies a little bit the priority that I think health ought to have as you look at the problems out there. You've got an infant mortality rate four times greater than the rest of the country. You've got a mortality rate between those who are 15 and 25, three times the national level. We've got alcoholism in large measure attributable to those high mortality rates. So they've got to live before they can be educated. And we don't have that kind of appreciation in the IHS budget or any place else with regard to the need to put greater emphasis on health in a more effective way. And that isn't your direct responsibility, I understand that.

I'm taking more than my share of the time. I appreciate your willingness to come and I know that you certainly do intend to work with us in trying to solve this.

Mr. LUJAN. Let me agree with you, that health is a very, very important part of life on the reservation. I didn't try to minimize that at all. I was just saying that in the things that are my direct responsibility, education is of a high, high priority because a lot of the problems that we have on reservations really can be remedied by education.

Senator DECONCINI. Thank you, Senator Daschle.

I just want to follow up quickly on that. You know, what Senator Daschle was referring to is a letter that the three of us sent to the President asking him to do what President Nixon did in 1970, and that was to create an office within the Executive Offices there to deal with Indian problems.

I have no doubt at all, Mr. Secretary, that you're going to push education and that some of these things will be changed, but you don't control the health budget. It just seems to me that it is important to have somebody down there who is advocating for you and is working with you as well as the Indian Health Service, as well as the other agencies that have authority and jurisdiction. And I only say that to you in hopes that you will conclude that you might get more and be able to kick some butt, if in fact you had somebody down there in the White House who was really committed to the Indians, who was going to help you build a coalition down there.

But on another subject, Mr. Secretary, I'd like to turn to the Department of Interior's management of natural resources. Almost 200,000 Indians in Oklahoma have waited 19 years for their land to be surveyed. And in the meantime, millions of dollars in revenues have been lost, while another tribe has pleaded over nine years for some action by the BIA to be taken to reclaim their polluted groundwater, and the list goes on and on.

But perhaps the most flagrant example of abdication is by the Bureau of Land Management. There are more than 10 inspectors in Oklahoma alone whose full-time job is to prevent the theft of oil from Indian and Federal lands. Yet in the last 8 years, they have uncovered only $20,490 in oil stolen from Indians. By contrast, in less than two months, this committee has exposed millions of dollars in oil theft from American Indians.

I guess, Mr. Secretary, these same inspectors testified that they knew such theft could be occurring, indeed, they have had a complaint against the Koch Oil Company, a major player out there, for over six months, yet nothing has been done. George Brown, in charge of the BLM Theft Program, testified before us that this failure to detect widespread theft fully met BLM's trust responsibility towards Indians.

My question is obvious. Do you agree with Mr. Brown?

Mr. LUJAN. Well, I don't—let me tell you this, that I don't know the extent of that. I've heard those reports, and I have no reason to doubt them. I will tell you this, just like in the question of royalty payments and those kinds of things, we put more people onto MMS, if that—because we determined in that instance that that was needed. And if we need more people at BLM to do that, then that's exactly what we'll do.

Senator DECONCINI. Well, Mr. Secretary, the problem is I don't know if we need more people, but you need somebody other than

Mr. Brown who would come here, in my opinion, at least, my humble opinion, and stick up and defend the BLM—one complaint, $20,000 recovery, where this committee in eight months found several million dollars by having investigators go out there and hide and watch the gaugers of the oil company come and rip off the Indians, and then go and test the tanks ourselves and check the measurements they turned in, and obviously BLM inspectors aren't doing that. And that's why I hope that when you get our final report, you'll conclude that, by God, there's something horrendously wrong here. If in only eight months we found millions of dollars, I don't know how much has been ripped off. I don't think it's billions, as has been reported. But I daresay it's in the millions.

Mr. LUJAN. Well, let me just put it this way to you, so that you'll understand the commitment. If your guys did better than ours did, you can be sure that ours will do better than yours did as soon as we get——

Senator DECONCINI. Well, Mr. Secretary——

Mr. LUJAN [continuing]. Because we want to. I'm not being facetious.

Senator DECONCINI. No, no; I'm so glad to hear you say that. Because our investigators went at it as if it was a criminal investigation, which it was not, but they approached it on that basis.

You have just stated something that's very important to me, that you're going to do better than what our investigators did, because our investigators found several million dollars. It was not easy. You know, it's hiding out there in the bush with a telescopic lens, going up there after the guy leaves, and measuring in the hot sun, and doing it several times. It's a big chore. So I'm very pleased with the answer.

Mr. LUJAN. We'll do what Senator Daschle suggested, we'll do a little kicking around.

Senator DECONCINI. Good, good.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Secretary, the problems that we faced and looked at on this committee have been numerous, as you know. Perhaps the most gripping and agonizing problem is this whole issue of sexual abuse of children on Indian reservations, which was found to be present in some BIA schools. And Mr. Secretary, it's not the fact that these situations existed that we found so appalling, because tragically, in our society today, we find this in schools all over America.

The aspect of it that we found so troubling was that there have been several cases that went on for years without detection. Once those cases were detected, there was no disciplinary action enacted on individuals in supervisory capacity. I don't wish to revisit the whole situation with you, Mr. Secretary, but I'd like to give you just one example, in that there were some parents on the Hopi Reservation at the Kayenta School who went to the principal and said, we know our children are being molested by this teacher, and the response of the principal was, well, what do you want to do, hurt this person's career? And it's our information that the principals of these schools were never even admonished during this period for their failure to act with regard to these situations.

And, Mr. Secretary, I think it's also important to add that Mr. Ragsdale, in I think a very courageous act, came before this committee, apologized for these actions and committed himself and the Department to seeing that these situations are rectified. I certainly take him at his word and that of the Department.

I guess what I'd like to ask is this. Don't you feel, among other things and other actions that need to be taken, that there should be mandatory reporting of child molestation cases, which is indeed the case in 50 States of this country?

Mr. **Lujan**. I do. As a matter of fact, it is Department policy to do that. We take that, and have taken it, very seriously. We've done more than just wring our hands. We moved the concern from a non-sensitive to a sensitive category, which means that we pay more attention to that. There's a more intense background check on all employees who come into contact with children. We improved our law enforcement response, the reporting procedures we require now, as policy, that there be reporting.

Now, I understand that you all are looking at legislation to do that. You know, that's just fine. That's great. We are concerned about that.

We also did more than that. You know, when this whole thing appeared, the molestation on the Hopi Reservation, we put in a program there to make it a good example of what could be done. We funded it, and have talked to Ivan Sidney about that, as you know. He's satisfied that the program is moving well.

So we are very concerned. We're putting resources and time and effort into that situation.

Senator **McCain**. Thank you, Mr. Secretary. I was going to thank you for what the Department has done in the case of the Hopi situation, where considerable amounts of money have been allocated for the much-needed counseling that is required in that situation, both for parents as well as children who were afflicted by this tragic situation. As you know, it went on for about 10 years before it was finally brought to a halt.

But I'd also like to emphasize another aspect of this with you, if I could. By the way, thank you for your commitment on this issue. But, Mr. Secretary, our commitment loses credibility if people who were in supervisory positions are simply transferred to other schools rather than being held responsible for the actions that took place when they were in a supervisory capacity. So I would hope that there would be a system of review for actions that need to be taken if there is a case of neglect or failure to exercise their responsibilities on the part of the people in a supervisory capacity, and appropriate discipline action taken where necessary.

And one of the aspects of this very troubling situation was that we could find no record of any supervisor who was ever disciplined in any way that was involved in any of those situations. And I hope we will implement a policy to make sure that's not repeated.

Mr. **Lujan**. We will. Pat wants to say something on that.

Senator **McCain**. Sure.

Mr. **Ragsdale**. We certainly agree with you, Senator. I would like to just inform you that we are doing that. And I'm sorry it took a special committee investigation for us to discover this breakdown in our system.

I think at the time we had the last hearing at which I appeared, we directed an inquiry be made. We have shared information with some of your staff to get some of the details, and that inquiry and investigation is still ongoing at this time.

In addition, I would like to say that either you or Senator DeConcini asked me about the process of strengthening our administrative procedures. We have, since the last time that we met, incorporated the reporting requirements into our educational BIAM, our Bureau manual, and have worked with OPM to raise the classification level of these positions from nonsensitive to sensitive, an automated check that we will have in place this summer. And one last thing, we have put into our administrative table of offenses, failure to report allegations of child abuse as a specific offense, and we've also included in the manual release an offense for any coverup, any knowing coverup of any allegations that were reported. I would agree with the Secretary that I think that Federal legislation is needed to provide criminal penalties as well.

Senator McCain. Thank you. As you know, Mr. Ragsdale, there's an interagency agreement between HHS and BIA that has been moving somewhat slowly that I think could be helpful in addressing this issue, and I hope you'll go back and tell them to expedite it as much as possible. Thank you, again.

Thank you, Mr. Chairman.

Senator DeConcini. Thank you, Mr. Secretary. I think that's encouraging, your statement that reporting laws that now exempt Indian country—you know, we should not have done that. And I don't know the history of how that happened, but all Federal lands were exempt, even other Federal parks—military bases, of course, have military law to deal with that. And it's just a tragedy as we kept seeing it unveiled here.

I am glad to see you support legislation, because I think that's going to be certainly one of the strong recommendations, that we have universal reporting laws.

Senator Daschle.

Senator Daschle. Mr. Chairman, I just would ask one other—first of all, just a short statement in reference to our past remarks.

If we're going to overcome this skepticism, pervasive as it is in and outside of Congress about our ability to deal with this issue, I would hope, Mr. Secretary, that while I am sure we wouldn't mandate that any report be given us so that we somehow stipulate in writing that we are going to have a better communicative ability in the future, that from time to time you take it upon yourself to come to us and say, here's what's happening right now. These are the things we're doing in clarifying and ultimately correcting the problems that we mutually understand to exist.

And secondly, here are some problems that we probably can't address with current legislative authority, that we've got to have some action on by the Congress. You can't just—I don't think there's any way that you can do it alone. There is going to be a need for Congressional involvement in assisting you, and to lay that on our lap is something that I think is imperative. And if that happens with some regularity, I don't think we could ever hope to have anything more productive and more conducive to ultimately resolving these matters than that. That's the statement.

The question, if you could, and just very briefly, reference has been made throughout these hearings to trust responsibility and how the Government has a trust responsibility with regard to Indians and reservations, and so many different definitions have been ascribed to "trust responsibility." I'd be interested, just because we've never had the opportunity to talk to you about that, how you would define it?

Mr. LUJAN. Well, I can only quote the lawyers in, you know, how you break the thing up. Trust responsibility, first of all, to me is the responsibility that I have as trustee of Native Americans.

Now, the lawyers tell me that the trust responsibility is that responsibility that I have toward their funds that we keep for tribes and the natural resources and the land. Those are trust responsibilities. The others, the health, the education, the social programs, that those are legal responsibilities that we have. I don't find one with greater emphasis than the other. I think that you all have given the Secretary of Interior the responsibility for all of those things. And they're equal responsibilities. But I suppose—I'm not a lawyer, but if I have to give you a legal definition, that is probably the definition that I've learned since I've been over at the Department of Interior that before taking any action, I better check it with the Solicitor's Office because I know that regardless of which way I go, I'm going to get sued. And at least I have to have to be able to explain why I did it.

I can also tell you that if you have a lawyer, you tell him what it is that you want to do and if at all possible to find a way that you're able to deal with it. That's generally the definition I would have, Senator.

Senator DASCHLE. Thank you.

Senator DECONCINI. Senator Daschle, thank you.

You know, Mr. Secretary, I realize you're not a lawyer, and that may be a benefit for your dealings there. But being a lawyer, I have somewhat the same interpretation of that trust responsibility. I've concluded very clearly in my own mind—even before these hearings, but now it is cemented—that the Secretary of Interior and the Department are not meeting their trust responsibilities. Just the fact that on the Navajo Reservation, the Big Boquillas Ranch deal out there, which is a long, drawn out thing, had a BIA appraiser with little or no experience, one year experience, I believe, appraised that property. You know, the BIA didn't step in and attempt to exercise some trust oversight. Maybe they couldn't have stopped it. There's a question about it, because some of it was tribal funds that went there, but these things, to me, as you said, some of them lap over as to the legal and the trust responsibility, and we really have failed our Native Americans in meeting those.

It's not all the Secretary's fault, either. I think some of it lies here with Congress. And you've got a great opportunity and a great challenge, and no easy task to bring about. There is sensitivity there to translate that into a working trust responsibility, to see that these changes are made. And Senator Daschle, quite frankly, expresses my frustration over it and his too, that we've got to do something.

This report which we will issue here is not going to be extremely complimentary of some of the things in the Department of the Interior and other departments. It's not going to be a blanket condemnation of all tribes' leaders, or everybody in the BIA, or anything. It's going to single out those particular areas where we feel that trust responsibility was not met.

I'm encouraged, Mr. Secretary, that just in our little exchange this morning you support some legal changes in the laws regarding reporting and other things, and I hope and trust that you will instruct your staff to work with this committee as we do our report so that we can offer some things that are practical and realistic but also meaningful.

Mr. **Lujan**. Might I make one final comment that will probably get me into some trouble, and I should learn not to, but not being an apologist for anybody or anything, I think that one of the things that I always have to look at very, very carefully is the areas of responsibility and self-determination. How far do you go in taking somebody by the hand, which we certainly don't want to do? And where do you say, well, you know, that is your responsibility?

Senator **DeConcini**. It's not an easy task, but it sure is clear that a lot more carefulness needs to be put into some of these decisions, and that's one of the things this committee delved into is whether or not your solicitor in your office really can represent the legal interests of the Indians versus the other responsibilities you have as the Secretary in dealing with Federal lands and water rights and what-have-you.

Senator McCain, do you have any further questions?

Senator **McCain**. No further questions.

Senator **DeConcini**. I want to thank you, Mr. Secretary. We look forward to working with your staff and your Department on our final report, and perhaps some constructive legislation.

Mr. **Lujan**. Thank you, Senator.

Senator **DeConcini**. Thank you.

We now will have Mr. Oliver "Buck" Revell, Executive Assistant Director of Investigations for the Federal Bureau of Investigation, Department of Justice, who will testify.

Mr. Revell, I want to express to you the deep appreciation of this entire committee for Agent Jim Elroy and the assistance that the Bureau gave in this investigation. It would not have been as successful and come to the conclusions it reached without your leadership and that of the Director to allocate the resources and giving us such a fine agent who didn't have to learn anything. He taught us.

Mr. **Revell**. Yes, sir, thank you.

Senator **DeConcini**. Do you have a statement, Mr. Revell?

STATEMENT OF OLIVER "BUCK" REVELL, EXECUTIVE ASSISTANT DIRECTOR, INVESTIGATIONS, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

Mr. **Revell**. Senator, I have submitted for the record a rather extensive opening statement——

Senator **DeConcini**. I saw that last night, and we will put that in the record.

Mr. **Revell**. I just would like to comment that I believe that these hearings, and in fact this inquiry by this committee, touch upon a very important part of the Federal responsibility. I had the opportunity to be Agent-in-Charge in Oklahoma. I'm a native Oklahoman, and I dealt with the problems that your hearings are all about. I don't think that there's any responsibility on the part of the Federal Government that is more important than the health and welfare of our Native Americans, and I doubt that there's an area of the Federal effort that has probably been more disparate and perhaps more confused than this particular effort.

I would like to commend you, the committee, and Mr. Ballen for looking into this problem and hopefully coming up with some solutions that will help us give equal protection of the law to American Indians.

[Prepared statement of Mr. Revell appears in appendix.]

Senator DECONCINI. Mr. Ballen.

Mr. BALLEN. Thank you very much, Mr. Chairman.

Mr. Revell, could you state your position with the FBI?

Mr. REVELL. Yes, sir. I'm Executive Assistant Director in Charge of Investigations.

Mr. BALLEN. And would that be the number two position in the Bureau?

Mr. REVELL. Well, it's one of three number two positions.

Mr. BALLEN. All right.

And what briefly, sir, are the FBI's responsibilities on Indian lands?

Mr. REVELL. We are responsible for the conduct of Federal, major felony investigations in Indian country, and on Indian reservations.

Mr. BALLEN. Now, sir, let me briefly outline for you why, apart from your expertise, we asked you to come this morning. The mission of this committee, a temporary investigative committee set up along the lines of Watergate and Iran-Contra committees, was to investigate fraud, mismanagement, and corruption in Indian affairs. Although our findings are different than the charges first alleged, we have indeed found fraud, corruption and mismanagement pervasive in Indian affairs.

Yet the interesting fact about what we have found, which the Senator has raised with the Secretary of Interior earlier, is that no matter how widespread or serious these problems of fraud, until now and the work of this committee, they were relatively unknown and unrecognized because in each instance the regulatory agency charged with oversight has failed to deal with the problem and to ever assume any responsibility over it.

The first area where this is obvious is oil and gas. The committee uncovered a national pattern of purchaser oil and gas theft which possibly also extends to coal, copper, and other natural resources. These purchasers of oil and gas throughout the country, including some of the largest companies, routinely mismeasure in their favor the amount of oil and gas that they purchase from Indian lands. While on an individual basis this may only be one or two percent, these purchases clearly, as a part of a consistent pattern, add up into the millions of dollars annually. And that is because this pattern has been so consistent, so pervasive, and unfortunately, until now, risk free.

How could such a pattern flagrantly continue for so long? Well, the regulatory agency that is charged with oversight, as Senator

DeConcini pointed out—the BLM—has utterly failed to do any kind of regulation or investigation. And we want your help, sir, in addressing this large scale and previously undetected criminal conspiracy.

Let me first ask, was the FBI aware that the theft of oil and gas from Indian lands, and indeed Federal lands, was as widespread as this committee has found?

Mr. **Revell**. No, sir, we were not.

Mr. **Ballen**. Are additional resources indicated to fight this problem?

Mr. **Revell**. Obviously, you have a very small sample, but if that sample is indicative of a more pervasive problem, then it would require additional resources, yes.

Mr. **Ballen**. And, sir, allegations of theft from Indian lands are made directly to the BLM. The committee has heard testimony that the BLM has utterly failed to pass any of that information along to the FBI. They even claim they didn't know the telephone number.

What can we do to ensure that people are reporting this information? Is there some role the FBI can play in helping them pick up the phone and call you?

Mr. **Revell**. Well, I will undertake to educate BLM as to our locations and telephones number throughout the country. I'll also instruct our special agents-in-charge to have a conference with BLM senior management in their territory to apprise them of our jurisdiction and interest in pursuing any such indications—not allegations, indications. We don't need an allegation. What we need is an indication of fraud, and we will pursue it.

Mr. **Ballen**. Well, what happened, unfortunately, Mr. Revell, is that for so long this problem has been neglected that the pattern and practice maybe will be less flagrant after these hearings, but it becomes so flagrant because these agencies simply were not out there doing their work. Therefore it's not the FBI; they couldn't know, but this has been widespread.

I wonder, though, one of the suggestions that has come up is that the run tickets, gas charts, and the other documents that are used in the measurement of oil and gas be subject to Title 18, Section 1001, false statement certifications. I was wondering whether that could be of some assistance to the FBI in criminally prosecuting this activity?

Mr. **Revell**. Absolutely. We ran into this problem back in the late 1970s and early 1980s on tier pricing, and had literally billions of dollars being defrauded from the Government and from other producers through this tier pricing scheme. We found that the document trail was very difficult to trace, but once we did trace it, we could establish a clear pattern. If we don't attach criminal penalties to those resources, which are in essence the trust responsibility of the Federal Government, then we'll have a difficult time in holding them accountable in the run tickets and other documents. If they are made subject to 1001, it would be very helpful in our investigations.

Mr. **Ballen**. Thank you, sir.

Another area the committee looked into was Indian preference in construction and other contracting. As the Co-Chairmen indicated, this program was riddled with fraud. Now, these programs are in the hundreds of millions of dollars annually, and the entire market is dominated by phony companies who kick the legitimate Indian companies right out of the market. And it didn't matter, in fairness to the Secretary of Interior who was just here, whether it was BIA, or HUD, or the SBA, other agencies, or how strict their eligibility requirements were, frankly. SBA has the strictest. In each instance, fraudulent firms cornered the market, operated with impunity, and they have been virtually undetected by the regulatory agencies charged with protecting the integrity of these programs.

Can the FBI assist in detecting fraudulent fronting?

Mr. **Revell**. We have done that in a number of programs, particularly HUD, with the Inspector General of HUD. We certainly can. There are Federal laws that are applicable. I think that there's an absolute obligation to ensure that Federal funds are expended for the purpose for which they were appropriated.

The entire area of set-aside programs is a difficult one. There are social objectives which are very laudatory. They need to ensure the building of the infrastructure within these particular elements of our society. Obviously, the Congress has felt very strongly that there needs to be special emphasis given to building these skills within the community. All of these are worthy objectives.

Unfortunately, the practice has been that virtually without exception they have been rife with fraud. Therefore the money intended for the constituents is not reaching those who need it.

Mr. **Ballen**. Well, that's exactly what the committee found.

Let me ask you this, Mr. Revell, would it help to enact some tougher criminal sanctions in this regard and some stiffer penalties for those who would engage in this kind of fraud?

Mr. **Revell**. Well, the difficulty is—there are probably sufficient statutes on the book. The difficulty is in getting an enforcement mechanism. The enforcement mechanism is, one, the detection; two, the referral; and three, the aggressive and prompt action on those matters. I believe that probably legislation could tighten some of these things, but what we really need is an impetus on the part of all agencies of Government to root it out and to pursue it vigorously.

Mr. **Ballen**. Let me just ask you this question. Since this problem is so pervasive, it strikes one a little bit like the drug problem in the United States; there's so many Federal dollars involved and so much demand. Is this an inevitable consequence of any kind of program like that? If the legitimate Indian firms can't get the bonding and don't have the capacity, and you've got many hundreds of millions of dollars annually, the fronts seem inevitable.

Mr. **Revell**. I think that there is a responsibility that should be undertaken. I was pleased to hear Secretary Lujan talk about the trust responsibility of the Department of Interior. I believe that there should be an affirmative approach to acquiring bonding for legitimate minority firms, for Indian firms, not just those that have a facade, but those in fact made up not of just a front, but Indian workers, Indian officers and executives. So I believe that there is a role for the Federal Government and particularly the Department of Interior to ensure that these programs are reaching the element of the Native American society that they're intended for, and that there should be criminal sanctions for those who would abuse the program in any fashion.

Mr. BALLEN. Mr. Revell, in another area the committee found widespread receipt of gratuities, kickbacks involving tribal officials on numerous reservations throughout the country. Most of what we uncovered would seem to be nothing but pure and simple bribes. For example, former Navajo Chairman Peter MacDonald routinely asked for and received money and gifts from contractors and later obtained Navajo contracts. Similarly, the committee heard from a Phoenix businessman and MacDonald's own son, who were corroborated by secret tape recordings, that MacDonald pushed through the purchase of land, at an inflated price, the Big Boquillas Ranch, so that he could potentially share in some of the eventual profits. But in each instance, what's interesting, because express quid pro quos were cleverly avoided by MacDonald, the applicability of Federal laws, bribery laws, are in doubt.

Let me ask you, is that a correct statement of current Federal laws as pertaining in this matter?

Mr. REVELL. Yes, sir. The bribery, straight out, is fairly well covered under Title 18, Section 666. The gratuities, including campaign contributions, are not well covered. Case law is lacking, definitions are lacking, and in fact, the quid pro quo provision makes it very difficult because many of these relations have continued over long years. And there is an infrastructure, an "old boy network," "you take care of me today, I'll take care of you tomorrow." That kind of approach is very difficult from a reactive standpoint to detect.

From a proactive standpoint, on occasion through an undercover operation, we can penetrate that type of conspiracy. But they are very difficult, and if tribal officials were held to the same standards as Federal officials, I believe that we could root it out more readily.

Senator DECONCINI. Excuse me, Mr. Revell. Did I understand you to say that with bribery, you can make a case against Indian corruption if it is bribery?

Mr. REVELL. Bribery with Federal funds.

Senator DECONCINI. With Federal funds.

Mr. REVELL. Federally funded projects.

Senator DECONCINI. And how do you define that—let me put it this way, if it was a Federally funded housing project and a tribal leader was taking a bribe from a contractor, and you could prove that the tribal leader okayed the contract for that, that would be a Federal crime?

Mr. REVELL. Yes, sir.

Senator DECONCINI. And have you done some of those?

Mr. REVELL. We have done some of those in limited cases. The difficulty is, again, the records do not exist, and generally when we have found out about it or the allegations have been rendered to us, there is no evidence except the one-on-one relationship which generally, even if——

Senator DECONCINI. It's not enough to make a case?

Mr. REVELL. Even with one of the individuals participating, it's a one-on-one situation. So they're very difficult——

Senator DECONCINI. We had testimony here regarding one in Oklahoma where the contractor said that the Native American leader, who first was head of the housing authority, and then became the chief of the tribe, was in fact paid by this builder, $500 per unit, of housing and grants, and most of them were Federal housing grants, and yet that particular case—and I don't know the details—the contractor was convicted, or pled guilty to a felony, where the tribal leader had no Federal charge filed against him and ended up with what amounted to a misdemeanor under tribal laws.

So that has something to do obviously with being able to make the case against him, but there's no question in your mind that if Federal funds are transferred, like a housing grant, or a sewer grant, or a water treatment grant, or something like that, in exchange for funds being paid to the person that grants it, that's a Federal crime?

Mr. REVELL. If we could isolate it within those parameters, yes.

Senator DECONCINI. Thank you.

Mr. BALLEN. Thank you, Mr. Chairman.

Isn't the problem, though—and I can speak from some experience as a former Federal prosecutor, it's very difficult to prove those cases, because under Federal law when you're talking about bribes, and it's a term of art, you have to prove an express quid pro quo, like the Chairman indicated between the bribe and the particular contract; whereas, if someone is just paying someone over a period of time, and they're just getting contracts, as in the MacDonald situation of selling land and such, there are no Federal laws that are adequately covering that?

Mr. REVELL. That's correct. And that's the reason I said reactive. It's very difficult. You have to be proactive to see the intent and the exchange of funds for that purpose, really, under a current law to be able to address that problem.

Senator DECONCINI. Excuse me, Mr. Ballen.

Obviously, to do that takes a very intensive investigation to build such a case, is that correct?

Mr. REVELL. That's correct, sir.

Mr. BALLEN. The committee also found in this area instances where elected tribal officials do business with entities in which they have a direct interest. For example, a tribal chief executive in Oklahoma received inside information in his tribal capacity that the Federal Government needed to lease some land. The official then in his individual capacity purchased the land himself, and then had the tribe enter in a contract with himself and lease the land back to the Federal Government so he could reap $200,000 in profit.

In another instance we found a tribal chairman who directed tribal funds to his own business on terms less favorable than the tribe could have received in the open market. These conflicts of interest, sir, would be illegal for Federal officials, would they not?

Mr. REVELL. Yes, sir.

Mr. BALLEN. And if you could briefly explain why they would be illegal? What is the harm in such gross conflict of interest, because I think some people don't see it?

Mr. **Revell**. Well, obviously, these maneuvers, these manipulations cause greater cost for the services rendered, if they're rendered at all. So, consequently, what happens because of this hidden interest, this conflict of interest, the goods and services delivered are either diminished or not delivered at all, and therefore the services intended for the tribe are not rendered unto the tribe. So this conflict, in essence, results in a diminution of services or support to the tribal members.

Mr. **Ballen**. And these gross conflicts of interest that are illegal for Federal and State and local officials are not illegal now under Federal law for tribal officials?

Mr. **Revell**. Under Federal law, no. Some tribes do have conflict of interest regulations. But they are at most misdemeanors.

Mr. **Ballen**. Well, let me ask you the question. If there's a conflict of interest regulation on the tribal level, and the tribal chief is engaging in a conflict of interest, that's rather difficult to proceed against?

Mr. **Revell**. That's a conflict of interest in itself.

Mr. **Ballen**. Right.

You also mentioned, Mr. Revell, that the recordkeeping or the lack of recordkeeping has been a problem in effective prosecution and investigation of these cases by the FBI. Do you think that something needs to be done in this area as well, to root out corruption?

Mr. **Revell**. There are literally dozens of Federal programs, many States have programs that are private foundations. Generally these funds are commingled without any accountability. They're expended by a small element within the tribe, and there are no records. So when you go in to prove that there has been a violation of a particular Federal program, you run into a problem of tracing those funds, their allocation, what they actually were expended for, and whether they were illegally diverted. So the lack of records and accounting make it very difficult to hold those accountable who have a fiduciary responsibility, and to ensure that the funds go for what they're intended to be expended for.

Mr. **Ballen**. Mr. Revell, another area where the committee found a complete bureaucratic failure, as Co-chairman McCain mentioned earlier this morning, was in the child sexual abuse area, particularly in BIA schools. What we found, we found one egregious instance in North Carolina where for 14 years allegations were consistently made against a teacher by staff, former employers, and indeed, some of the victims. Absolutely nothing was done about it, no report was ever made to the FBI. In fact, in this case, as Co-chairman McCain indicated, these people were promoted who failed to report the activity.

Now, I wanted to know whether the Bureau has had the same kind of problems in investigating child abuse cases of uncooperative Federal school administrators and officials?

Mr. **Revell**. On occasion that has been the case. Recently—I heard the case earlier mentioned today in Arizona—there tends to be an unwillingness to get involved and even a protectiveness towards associates, instead of the primary purpose, which is the protection of the child, which obviously is all of our responsibility.

In 1986 the Major Crimes Act was modified, was amended to give us a specific child abuse statute that we can pursue. We had prior statutes that we could also use. I can think of nothing that is more important for us than to assure that Native American children are not abused, particularly abused by the system that's supposed to protect them.

Mr. BALLEN. Mr. Revell, you say there's a protective attitude. What can the Federal Government do, I imagine in addition to the reporting law that was discussed, to ensure that people—would you make it a crime for people to fail to report allegations? Would that encourage them to be more cooperative with the FBI in these child abuse investigations?

Mr. REVELL. I think I would make it an affirmative responsibility to report it, and a violation of law to fail to report it.

Mr. BALLEN. And would you make it a violation of criminal law to fail to report it?

Mr. REVELL. If the abuse against the child is significant, then I would. There are difficulties when you make it into a situation with corporal punishment and these types of things, but to fail to report an allegation of an assault, either sexual or physical upon a child, to me, is the worst case of misprision and should be pursued.

Mr. BALLEN. Thank you, Mr. Revell.

Mr. Chairman, I have no further questions of the witness.

Senator DECONCINI. Thank you, Mr. Revell.

In having an opportunity to review a little bit of what this committee uncovered in the area of oil thefts and contract fronts and what have you, have you by any chance had an opportunity to assess the significance on the FBI if, in fact, you were going to try to do more investigations on Indian country?

Mr. REVELL. Well, the allegations concerning the diversion of funds on the oil and natural resources is very recent. We did, at the request of the committee, a survey on the other offenses, the entire spectrum of currently enforced Federal statutes that are our responsibility. And if we were asked to undertake a comprehensive program, we found that the resources would be inadequate as they currently exist.

Senator DECONCINI. Did you make any estimate of what you would need if you were to go into do a major investigation?

Mr. REVELL. Approximately 60 man years, agent man years.

Senator DECONCINI. And was there any estimate of what that amounts to in dollars?

Mr. REVELL. Well, Senator, I couldn't tell you exactly. I believe it probably would run in the neighborhood of about $12 million.

Senator DECONCINI. $12 million a year?

Mr. REVELL. Yes, sir.

Senator DECONCINI. Thank you. I have no further questions. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Thank you, Mr. Revell, for being here today, and all the assistance that you and Agent Elroy have given us during the course of these hearings.

Let me just discuss with you 1 minute the whole issue of enforcement on Indian reservations and the FBI's role. Isn't it true that in recent years the presence of the FBI has somewhat declined due to a change in policy, placing more of these responsibilities on BIA and tribal law enforcement officials?

Mr. **Revell**. Yes, sir; from 1975, when there was a task force within Justice to examine the enforcement on Indian lands. Up until 1985, when we made a decision, internally, because it was not working to pursue a more vigorous program on Indian reservations to ensure equal protection of the law. From 1975 to 1985 there was a diminishment of FBI presence and FBI involvement, except in training and assistance to BIA and tribal police to prepare them to carry out these responsibilities.

Senator **McCain**. Now, do you feel that you have you have enough assets to devote to law enforcement on reservations with literally hundreds of thousands of acres of land?

Mr. **Revell**. Well, Senator, at the present time we have 40 agents dedicated full time or the equivalent of full time to Indian reservation matters. As you say, there are literally millions of acres. In Oklahoma alone, we have approximately 1.2 million acres spread over 53 different tribes, some of them in parcels as small as 10 acres. That's very difficult. Even where it's all in one location, some of these reservations are huge. I think that the Indian reservations in your State are about one-third of the total area of the State.

Senator **McCain**. It's 27 percent, yes.

Mr. **Revell**. So obviously 40 agents, even though they're only working major felony offenses, are spread pretty thin to ensure equal protection for the Indian population.

Senator **McCain**. Occasionally we run into a very serious situation with regard to law enforcement, and I'm referring to a case, for example, at Parker, Arizona, where we have what we call checkerboarding which, as you know, is where certain lands are owned by Indians interspersed with lands owned by non-Indians, which is due to another failed policy of this Government towards Native Americans. In these areas we run into enormous enforcement problems, where, when I ask the question, well, who can have overall supervision here, and they respond, only one organization can have overall supervision, the FBI, because of the relationships between Indian and non-Indians, on Indian land or Indians on non-Indian land.

Without making it too complex, isn't that the case in some instances?

Mr. **Revell**. Well, there is a very complex system to determine who has jurisdiction. As you state, whether it's an Indian-Indian affair, whether it's a non-Indian-Indian affair, who the victim, who the subject——

Senator **McCain**. Where it took place.

Mr. **Revell**. Where it took place. In some instances, we even need a survey to determine if the offense was Federal, because obviously we have to prove the venue of the jurisdiction. So it is a very difficult area. It's one in which many times minor offenses are simply not pursued because it takes a major effort to determine the venue of the crime.

Senator **McCain**. And so we end up in a situation where—and by the way, this issue is complicated dramatically by the issue of tribal sovereignty. It was not an intentional policy that we arrived at this situation. But clearly, there needs to be more cooperation between local and tribal authorities, because cross-deputization does help address some of these issues. But there are still other major crimes that even with cross-deputization cannot be addressed.

So do you think it should be a long-term project for at least the Select Committee on Indian Affairs to look at this entire issue of law enforcement and see how we can improve the efficiency in order to provide Indians and non-Indians alike with more protection? Would you agree with that general thesis?

Mr. REVELL. Absolutely, Senator. There are many frustrated State and local law enforcement officers who want to help, who are called upon to help, but have been told by their attorneys and solicitors, you cannot because you may, in fact, be sued for acting in an area where you have no jurisdiction.

I know in Oklahoma that the highway patrol was very much concerned that they would not be able to provide support and assistance in areas where they could not determine jurisdiction. We had a whole project set up just to try and determine the status of each parcel of land so the highway patrol and the county sheriff could know whether or not they could even render assistance on an emergency basis. It is a very difficult problem, and one that law enforcement has been sort of left to its own devices to solve, and it really involves legislative and legal relief.

Senator MCCAIN. Well, I will seek to prevail upon the Chairman of the full committee, because I know that the Chairman of this committee shares my concern on this issue, to look at this issue and we'll be working together on that.

When you get right down to it, Indians are not receiving the same protections in many cases that non-Indians are, because of this convoluted situation we find ourselves in, would you agree with that?

Mr. REVELL. Absolutely, Senator.

Senator MCCAIN. I just would like to raise one more topic with you, and that's this issue of Indian gaming. Is it your professional opinion that there is some penetration of Indian gaming activities by organized crime?

Mr. REVELL. There has been some to date, yes.

Senator MCCAIN. Is it difficult to quantify how much?

Mr. REVELL. It is difficult. There are certain specific cases where it has been proven. Organized crime in this country is very sophisticated. It has learned to deal through surrogates and fronts. It doesn't take on the Damon Runyon type appearance. You can't tell that the particular provider of these services is connected to an organized crime family. So it is sophisticated.

Generally, wherever gambling has been authorized, you have a vulnerability. Now, some States and localities have been able through vigorous enforcement and licensing process to take care of that vulnerability and ensure that there was not corruption of the gambling industry. Even when you do that, the ancillary industries are also subject to manipulation and abuse.

There are problems there. I know that the Congress has dealt with them through legislation, but many of the tribes are not sufficiently sophisticated in dealing with outside vendors to be able to appreciate how they can be manipulated in this process, and of course, again, the funds are diverted and the tribe does not receive the benefits that they would be due from profits gained.

Senator McCain. That's the important point there. It is tribal members who are deprived, because they would receive the revenue stream from this Indian gaming.

Do you believe that the Indian Gaming Commission, as set up by legislation last year, will be sufficient to address this issue of organized crime penetration into Indian gaming activities?

Mr. Revell. No, sir.

Senator McCain. You do not?

Mr. Revell. No, sir.

Senator McCain. What do you think needs to be done?

Mr. Revell. They have no enforcement capability. They essentially depend upon the tribes themselves to investigate the background, and they don't even have authority to receive our records under the law. They're not a law enforcement entity, so there's no provision under Federal law to provide them with our records.

I think that if the Congress is serious then the Commission needs to be given more teeth, more capability, and it needs to have a mandate to ensure that organized crime and corruption are not allowed to penetrate this particular area of resources for the Native Americans.

Senator McCain. Well, would you submit to the Chairman and to me, or to this committee, your written recommendations as to how you think the legislation would need to be improved in order to help us prevent the penetration of organized crime into Indian gaming?

Mr. Revell. Subject to the approval of the Attorney General, yes, sir.

Senator McCain. Thank you.

Thank you, Mr. Chairman.

Senator DeConcini. Thank you, Senator.

Senator Daschle.

Senator Daschle. Thank you, Mr. Chairman.

I would like to pursue, just for a moment, Senator McCain's questions with regard to jurisdiction and law enforcement.

The Indian court, of course, is limited to misdemeanors. And in that regard I've always felt that that clear delineation ought to remove a lot of the obfuscation that constantly exists. But it doesn't, and I'm still not clear as to why that delineation of authority and courts does not thereby follow through with a clear delineation of enforcement.

Could you enlighten us?

Mr. Revell. Tribal courts have jurisdiction over minor offenses among tribal members. On many of the reservations you have non-Indians, and you have other tribes. So even if you have an active and aggressive tribal court, their jurisdiction is limited to those members of the tribe. If you have a non-Indian the tribe has no jurisdiction. If you have an Indian from a different tribe, at least in most practices they don't have jurisdiction, unless there is a compact between the tribes. Many offenses that would essentially be felonies, but are considered by the U.S. Attorneys as being too minor to prosecute in Federal court, therefore fall between the cracks. So what appears to be on paper a clear delineation of jurisdiction as far as the capability of the Government to prosecute, or the tribes to prosecute, falls in these areas where there is no adequate remedy.

Senator **Daschle**. But the remedy seems to be one which is largely based upon a financial difficulty. You don't have the resources.

Going back to your comment just a minute ago that you have felonies which are committed, which the courts feel are not of a significant consequence to follow up, well, if they had the resources, I would think that any felony would be addressed. Isn't it a resource allocation question?

Mr. **Revell**. Senator, the theft of over $100 of Federal funds is a felony. Assaults can be felonies, when in fact they may have been family disputes. So the law sometimes is overly aggressive in defining a felony and putting it then out of the reach of the tribe. That is part of the problem.

The other area, I think, is the fact that the Federal courts and the FBI are restricted to major crimes. That doesn't mean that we should go into other areas. I think that the tribal policy should be upgraded, improved, given the resources to address other than major crimes. And perhaps, someday, major crimes. But right now, most of the tribes do not have adequate police forces, the training, the career service that is needed to address even the misdemeanors.

Senator **Daschle**. So you seem to confirm what I just said about resource allocation. Are you saying that to a large extent, if we could address resource allocation, giving law enforcement officials a lot more resources, that the jurisdictional question would fade in terms of the consequence that it has today?

Mr. **Revell**. Except for the issue of crimes by non-Indians on reservations. That is an area where the courts, and the State Courts in particular, have had different opinions and unless you're willing to take all of those cases into Federal court, you still have a gap in the jurisdiction because the State courts have been loath to exercise jurisdiction and the tribes have no jurisdiction.

Senator **Daschle**. Just a curiosity question, you said you had 40 FBI agents on reservations in the country today. You indicated the need for a lot more, given the vast amount of territory. Out of curiosity, how many FBI agents of those 40 are currently Native Americans?

Mr. **Revell**. Senator, I don't know how many assigned to investigating Indian affairs are Native Americans. A good number. We have 40 agents that are Native Americans.

Senator **Daschle**. Oh, I see, all 40 of those are Native Americans?

Mr. **Revell**. No. That's the point. Many of them, are. Some are not. But we have a—because it happens that the two figures are the same. We have 40 Indian agents. We have 40 agents working Indian affairs, but they're not synonymous.

Senator **Daschle**. OK.

Mr. **Revell**. And we are seeking and have been seeking more American Indians and Native Americans of all types to enter the Bureau in both agent and other positions. We think it's very important to have a full representation of Native Americans within the FBI, and we are seeking additional agents in that capacity.

Senator **Daschle**. Thank you, Mr. Chairman, and thank you, Mr. Revell.

Senator **DeConcini**. Thank you, Senator Daschle.

Thank you, Mr. Revell. We're most appreciative, and we expressed that to Mr. Sessions, and we want to thank you again for Mr. Elroy, and all the support that you've given. We will be continuing to finally kind of clean up on our investigation, and we appreciate the help immensely, sir.

Mr. **Revell**. Thank you, Senator. I'd like to, again, thank you and the committee for the work you're doing.

Senator **DeConcini**. Very good.

The last group of witnesses will be, Robert Bruce Haley, Law Enforcement Administrator, Swimonish and Lummi Tribes, and Hilda Ann Manuel, Chief Judge, Tohono O'odham Judicial System.

Thank you for being with us today, and Mr. Ballen will conduct the inquiry.

Mr. **Ballen**. Thank you very much, Mr. Chairman.

STATEMENT OF CHIEF JUDGE HILDA ANN MANUEL, TOHONO O'ODHAM JUDICIAL SYSTEM, CHIEF JUDGE

Mr. **Ballen**. Judge Manuel, what is your current position?

Judge **Manuel**. Thank you, Mr. Ballen, I am the Chief Judge for the Tohono O'odham Judicial Branch.

Mr. **Ballen**. And what is your background prior to this? How long have you been chief judge?

Judge **Manuel**. In the current position since 1987. Prior to that I worked with the Pima County Attorney's Office in Tucson as a deputy prosecutor. Prior to that I worked as an aide to the former Chairman, Joshia Moore, and prior to that as a judge.

Mr. **Ballen**. And could you briefly describe where the Tohono O'odham Nation is and its size and population?

Judge **Manuel**. Yes; the reservation is located approximately 60 miles west of Tucson, and 140 miles south of Phoenix, bordering the international Mexico border. There are approximately 25,000 members of the Tohono O'odham Nation.

Mr. **Ballen**. And roughly the size of Connecticut, the reservation?

Judge **Manuel**. Yes; approximately three million acres of land.

Mr. **Ballen**. And could you describe the form of tribal government the Tohono O'odham Nation has?

Judge **Manuel**. Since 1986, the Tohono O'odham Nation has been formed as a separation of powers type of government similar to the United States, where the three branches of government exist and share powers equally: judicial, legislative and the executive branches.

Mr. **Ballen**. And you have a completely independent judiciary as part of that system?

Judge **Manuel**. Yes.

Mr. **Ballen**. How many other tribal governments have that separation of powers with an independent judiciary?

Judge MANUEL. I don't know about how many other tribes have similar powers with an independent judiciary. I am aware that there are less than three tribes that have constitutions that require a separation of powers government.

Mr. BALLEN. And just for the record, do you know who those three tribes are?

Judge MANUEL. I know that the Pasqua Yaqui in Tucson have a similar constitution, and I believe another tribe, the Wind River.

Mr. BALLEN. And since this is a rather unique situation, what led to the formation of this constitutionally separated, mandated separation of powers in Tohono O'odham?

Judge MANUEL. I believe that as a result of concern and dissatisfaction by tribal members out in the communities, and the sentiment that too much power was concentrated in the tribal council, that when the constitution committee came to the communities and to the villages to introduce the idea of having a more balanced government that there was widespread support for that, which was the impetus for actually getting the constitution passed.

Mr. BALLEN. And this constitutional committee spent five years out in the field soliciting the views of Tohono O'odham members?

Judge MANUEL. Yes; it was a long process.

Mr. BALLEN. Now, Judge Manuel, you also have your own tribal police force, is that correct?

Judge MANUEL. Yes; the tribe does contract for its own police department.

Mr. BALLEN. And could you briefly describe the nature of that police force?

Judge MANUEL. The department consists of approximately 34 commissioned officers, as well as several people in support services. And the tribe, when it did take over the law enforcement functions from the Bureau of Indian Affairs, made some specific requirements that the persons who would be hired as police officers would receive State certification under Arizona law; that is a requirement for any person who works—who is interested in working as a police officer.

Mr. BALLEN. Now, this committee has received numerous commendation letters from the United States Attorney in the District of Arizona, as well as from the FBI in the District of Arizona, on the Tohono O'odham police department. And is it correct, for the record, that the Tohono O'odham police department is the only police force in the State of Arizona that is allowed to present cases directly to the United States Attorney's Office for Arizona?

Judge MANUEL. Yes; that is true.

STATEMENT OF ROBERT BRUCE HALEY, LAW ENFORCEMENT ADMINISTRATOR, SWIMONISH AND LUMMI TRIBES

Mr. BALLEN. Mr. Haley, if I can turn briefly to you. Could you describe your current position and background?

Mr. HALEY. I am the law and order administrator for the Lummi and Swimonish Indian Tribes.

Mr. BALLEN. How long have you held that position?

Mr. HALEY. Six years with the Lummi Tribe and three years with the Swimonish Tribe.

Mr. **Ballen**. Where are the Lummi and Swimonish Tribes located, sir?

Mr. **Haley**. We're approximately 100 miles north of Seattle, Washington, located on Puget Sound, the Lummi Tribe being approximately 45 miles north of the Swimonish Tribe on the Canadian border.

Mr. **Ballen**. And, sir, in addition to being the Chief Law Enforcement Administrator for these tribes, what other offices do you hold, sir?

Mr. **Haley**. I am presently the General Chairman of the Indian Law Enforcement Section of the International Association of Chiefs of Police. I am vice president of the Northwest Association of Tribal Enforcement Officers, immediate past president of the International Peace Arch Law Enforcement Council, and also a member of the FBI National Academy Associates.

Mr. **Ballen**. Now, sir, and prior to assuming your position, you have a long history of 22 years in law enforcement?

Mr. **Haley**. Yes, sir.

Mr. **Ballen**. Now, we have also received, just for the record, like Judge Manuel's police force, we have received letters of commendation from the FBI, and the United States Attorney of the Western District of Washington, commending the professional nature of your police force, sir. And I'd like the record to reflect that.

Mr. **Haley**. Thank you.

[The prepared statement of Mr. Haley appears in appendix.]

Mr. **Ballen**. Judge Manuel, let me first turn to you with some questions.

One of the committee's findings, as you've heard outlined this morning to Secretary Lujan and to the Assistant Director Revell of the FBI, was that the committee found a widespread pattern of natural resources theft. Are you aware of the committee's work in this regard?

Judge **Manuel**. I am.

Mr. **Ballen**. And copper is the major resource of the Tohono O'odham Nation, is that correct?

Judge **Manuel**. Yes.

Mr. **Ballen**. Have you been aware whether or not copper has been subjected to the same company practices of theft that we have seen with oil, gas and coal, nationwide?

Judge **Manuel**. I am not aware, and I do not believe that the Nation is aware either, whether that is true.

Mr. **Ballen**. Well, let me ask you this. This committee found that BLM and BIA were not monitoring natural resources to protect them against that. Are BIA and BLM monitoring the copper resource on the Tohono O'odham Nation?

Judge **Manuel**. Not in the strict sense that I believe that they should.

Mr. **Ballen**. Now, the committee also discovered, in the course of subpoenaing various records, that during negotiations by the BIA with the copper companies at Tohono O'odham, that the BIA simply accepted the copper companies' recommendations without any independent, critical and economic evaluation. Does that surprise you, Judge Manuel?

Judge **Manuel**. No; it does not.

Mr. Ballen. Would you favor some additional legislation, as brought up this morning, to ensure that everything possible is done to prevent this kind of theft, and to ensure that the BIA is meeting its trust responsibility with regard to copper?

Judge Manuel. Yes; I would, because I believe that all of the tribes may feel that they are fully qualified to assume a lot of their responsibilities. Most of the time they do have a great need for technical assistance. And I think that the Bureau can certainly provide that. So I do favor it.

Mr. Ballen. And if not the Bureau, someone needs to do something here?

Judge Manuel. Yes; exactly.

Mr. Ballen. Now, the committee also found, as you heard earlier, that the problem with fraudulent firms and fronting exist nationwide. But specifically on the Tohono O'odham Nation, the committee found that some of the major firms who have been active there, have indeed been fronts, notably Native American Construction, which has done major projects on the Tohono O'odham Nation through the BIA and others, and HUD, was in fact controlled by John Paddock of nearby Maranna, Arizona. Is the Nation aware of this problem?

Judge Manuel. No.

Mr. Ballen. Again, does the Nation have the resources and expertise to independently investigate the firms that the BIA and HUD send on to the Nation as legitimate Indian firms to do the work?

Judge Manuel. No, they don't. And as is typical, they always do rely on the Bureau of Indian Affairs for any assistance.

Mr. Ballen. And that reliance led to this situation in this regard?

Judge Manuel. Apparently.

Mr. Ballen. Now, would you again favor additional legislation requiring the BIA and others to do a more effective screening, and also imposing tougher criminal penalties and sanctions and laws in the fronting area?

Judge Manuel. Yes, I would.

Mr. Ballen. Now, as you earlier heard, another area the committee inquired into was tribal corruption. Do you support Federal laws to help law enforcement pursue tribal corruption?

Judge Manuel. Yes, I do.

Mr. Ballen. And have you been aware of the committee's work in regard to uncovering gratuities and conflicts of interest?

Judge Manuel. I am aware of it.

Mr. Ballen. Do you have any experience at the Tohono O'odham Nation with the problem of gratuities and those not being against the law?

Judge Manuel. During my term as an aide to the former Chairman, Joshia Moore, I became aware of a situation where a major developer was interested in leasing several thousand acres of land for the purposes of building residential and commercial buildings within the reservation. And one of the things that concerned me, that I witnessed and saw, was that the developer in order to obtain a favorable consideration from key council members and other individuals who would have some influence over a decision whether or not to allow this developer to build this huge residential area, the conduct, or at least the activity by the developer to provide free trips, dinners, and even in one or two cases, financial assistance to councilmen in hopes of obtaining their favorable vote. And that concerned me, because it did provide a great temptation for these tribal councilmen to be bribed into a favorable vote in favor of the developer.

Mr. BALLEN. So you would favor, as discussed earlier this morning, some Federal laws that prohibited receipt of gratuities and gross conflict of interest on the part of tribal officials?

Judge MANUEL. Yes, I would.

Senator DECONCINI. Excuse me, Mr. Ballen.

Does the Tohono O'odham now have any such laws?

Judge MANUEL. No, the tribe itself does not have any laws.

Senator DECONCINI. Is that a debate? Is there effort to do that?

Judge MANUEL. I think there's been a great deal of interest generated by this committee's investigations earlier this year. And I think that more than likely there will be something.

Senator DECONCINI. Thank you.

Mr. BALLEN. Thank you, Mr. Chairman.

Mr. Haley, have the Lummi Police also pursued the matter of tribal corruption?

Mr. HALEY. Yes, we have. We have tribal laws in regards to corruption, and we have worked a case with the FBI on that matter.

Mr. BALLEN. And would you favor additional Federal laws to prevent these and outlaw these kinds of activities as we had earlier discussed?

Mr. HALEY. Yes, I would.

Mr. BALLEN. Do you believe, in another area, there's a threat to Indian gaming from organized crime?

Mr. HALEY. Yes, I do.

Mr. BALLEN. What has been your experience in this area, Chief Haley?

Mr. HALEY. In 1983, the Lummi Tribe was pursuing entering into an agreement for bingo and blackjack operation, and was dealing with a management firm to assist them. We asked the FBI to do a background investigation on this firm, and assist them to make the determination whether to enter into the large amount of loans to start this organization. The FBI declined to do so. After the loans were secured, which the tribe is still paying on, and many people were hired, the FBI then came in and closed the operation down by court order because of ties to organized crime that the developers had.

Mr. BALLEN. Now, has this, through your other associations with the International Association of Chiefs of Police, et cetera, has this been a problem that you have also encountered throughout the West Coast, of possible organized crime infiltration?

Mr. HALEY. Yes. We had a similar—not a similar experience. We had an experience at Swimonish where the general manager was accused of—the tribal investigation, suspected of embezzling a large amount of money with others. And when we went to the FBI for their assistance, he then left his post and moved to Canada.

Mr. BALLEN. So you couldn't pursue him?

Mr. HALEY. We could not pursue him.

Mr. **Ballen**. Judge Manuel, the committee, as you've heard earlier, has investigated the problem of child sexual abuse on Indian land. Has the Tohono O'odham Nation experienced a problem in this regard?

Judge **Manuel**. Yes, it has.

Mr. **Ballen**. How pervasive a problem, Judge Manuel?

Judge **Manuel**. In the area of sex crimes against children, I believe that it would be fair to say that anywhere from 20 to 30 cases annually are reported and investigated.

Mr. **Ballen**. Now, we've heard a lot this morning about a mandatory reporting law, and the failure of Government officials to report these allegations, and have them promptly investigated, and punished. Does the tribe itself have a mandatory reporting law?

Judge **Manuel**. Yes; the Tohono O'odham Nation does.

Mr. **Ballen**. Do you have BIA and IHS facilities on the Tohono O'odham Nation?

Judge **Manuel**. Yes; we do.

Mr. **Ballen**. Do those officials follow the tribal law or mandatory reporting?

Judge **Manuel**. No; they do not, even though I have spent a great deal of time meeting with local BIA school officials and IHS doctors reviewing the tribal mandatory reporting law, and have unsuccessfully tried to convince them that they are required to comply with tribal law. They've just taken the position that because it is tribal law, they don't have to comply.

Mr. **Ballen**. So I take it then you would favor some Federal law to make them comply with these basic minimum standards?

Judge **Manuel**. Yes, I do.

Mr. **Ballen**. Chief Haley, you've had numerous successes at the Lummi Tribe in investigating child sexual abuse cases, is that correct?

Mr. **Haley**. That's correct.

Mr. **Ballen**. Since you took office six years ago, how many child sexual abuse cases has your office successfully investigated?

Mr. **Haley**. Approximately 60.

Mr. **Ballen**. Of those 60 cases, sir—and we're talking about serious cases of child sexual abuse?

Mr. **Haley**. Yes.

Mr. **Ballen**. Of those 60 cases, sir, how many have been prosecuted by the United States Attorney in the Western District of Washington?

Mr. **Haley**. One.

Mr. **Ballen**. So, that's the only case that was prosecuted as a felony?

Mr. **Haley**. That's correct.

Mr. **Ballen**. And these were felony child sexual abuse cases by your investigation. And didn't you cooperate with the FBI in most of these investigations as well?

Mr. **Haley**. Yes, we did.

Mr. **Ballen**. Now, since 1986, Assistant Director Revell testified that the FBI and the Federal Government has responsibility since 1986 to specifically investigate and prosecute child sexual abuse cases. It's an offense against the Federal criminal laws of this country. Since 1986, when Congress mandated Federal jurisdiction over child sexual abuse cases, how many cases has the Lummi Police investigated?

Mr. **HALEY**. Over 30.

Mr. **BALLEN**. And how many have been prosecuted by the United States Attorney in Washington?

Mr. **HALEY**. None.

Mr. **BALLEN**. Do you have any explanation whatsoever for this failure on the part of the United States Attorney to prosecute child sexual abuse at the Lummi Reservation? Maybe you can outline the consequences of this failure to prosecute, too?

Mr. **HALEY**. Our feeling is that the United States Attorney does not feel that the crimes on Indian country in all areas are a high priority. And without that priority, we have no one to speak with that is a Deputy U.S. Attorney in his office. He does not have anyone versed in Indian law that handles Indian cases.

Mr. **BALLEN**. Would you favor some additional legislation to ensure the enforcement of child sexual abuse cases by this Congress?

Mr. **HALEY**. Yes; I would strongly urge that additional resources be made available to the Federal and tribal level for investigation and prosecution of child abuse cases. But we'd also like to make it clear that it should be mandated to those Federal agencies receiving these resources, both at the investigatory and the prosecution level, that these personnel be used for Indian cases alone, and not be brought in and then used in a number of other areas.

Mr. **BALLEN**. So in other words, if Congress decided to increase the number of agents in the FBI, and increase the number of Federal prosecutors in this regard, you would favor that Congress mandate that that increase be specifically allocated to deal with Indian problems, and not put in the general mix?

Mr. **HALEY**. That's correct.

Mr. **BALLEN**. Just for the record, Judge Manuel, do you have a similar experience with the United States Attorney in the District of Arizona in refusing to prosecute these cases, or a different experience?

Judge **MANUEL**. I am glad to say that we don't have that problem with the U.S. Attorneys in Tucson. I believe that we have a unique relationship with not only the FBI agent who is assigned out to Tohono O'odham, but also to several Assistant U.S. Attorneys. Our prosecution rate is 100 percent.

Mr. **BALLEN**. So as opposed to nearly zero percent with Mr. Haley up in Washington, your child sexual abuse cases are almost 100 percent prosecuted by the United States Attorney. It bespeaks a very good record in Arizona, does it not?

Judge **MANUEL**. I think it speaks very well for Steve McNamee, who is the U.S. Attorney in Arizona. He's very committed to Indian cases.

Mr. **BALLEN**. Thank you, Mr. Chairman.

Mr. **HALEY**. May I——

Senator **DECONCINI**. Absolutely.

Mr. **HALEY**. If I could say one thing more, the most—the reason we get back from the United States Attorney, mostly, is that these sexual abuse crimes are one-on-one. And the one that was prosecuted, there was an eyewitness that walked in, and so we find that's what we normally get as a declination.

Senator DeConcini. I'm glad you mentioned that, not to take anything away from the fact that they haven't been prosecuted. Having been a prosecutor, those are extremely difficult cases, extremely difficult, and you have to be, you know, be willing, having been the Pima County Attorney, to lose some, to make the point that if you're charged with that and there's any evidence at all you're going to go forward. It sounds as though in your case they haven't even wanted to go that far.

Mr. Haley. We found that the U.S. Attorneys will not come up and even interview the children to see if they would make credible witnesses.

Senator DeConcini. Well, that's really ridiculous.

Judge Manuel, and Mr. Haley, did I understand you to say that regarding "tribal corruption" where there are gratuities and/or payments to elected tribal leaders, or appointed tribal leaders in handling their statutory obligations, do you support Federal legislation that would make that a Federal crime?

Judge Manuel. Yes, I would. And I'd just like to say that there have been some statements by certain tribal leaders suggesting that accepting gifts and gratuities may be a part of the custom and tradition of the tribe. And I think if that is true within a particular tribe that some kind of exceptions be allowed for that. But I think it's clear within the tribal communities what is acceptable and what isn't.

Senator DeConcini. That's not difficult to define.

Judge Manuel. No.

Senator DeConcini. In any given tribe.

Judge Manuel. I do not believe so.

Senator DeConcini. Mr. Haley.

Mr. Haley. I agree with Judge Manuel, and I would like to indicate that the tribes that I do work with are in support of corruption laws, as they've indicated by having their own.

Senator DeConcini. And would support a Federal law if extended to them?

Mr. Haley. Yes.

Senator DeConcini. Thank you. I have no further questions.

Senator McCain.

Senator McCain. I'd like to thank you both.

I guess I'm a little bit puzzled, Mr. Haley, about the lack of cooperation on the part of the U.S. Attorneys in your State. What happens when you complain?

Mr. Haley. Well, I was before this committee last February making the same comments. We've done numerous complaints. We've been advised that, of course, he is an appointed office, and so not much happens. There have been some other cases that they have taken that have been in Indian country that have been better pressed, but it's not been the cases where Indian children have been the victims.

Senator McCain. Well, I know it's not in the purview of this committee, but maybe you could send us a copy of the correspondence that you have sent to the U.S. Attorney, and perhaps the Chairman would agree that we could write a letter expressing our concerns. Frankly, we cannot do a lot more than express our concern, unless we really wanted to escalate, but we'd at least——

Senator DECONCINI. I would go along with that.

Mr. HALEY. I understand a new U.S. Attorney is being appointed. And we have met with the special agent in charge of the FBI office in Seattle. He has come up and visited our Indian reservation, which we felt quite an honor, and he has indicated his support in not only contacting the present U.S. Attorney, but getting the support of the new U.S. Attorney to assist us in these cases, because we have a signed agreement for investigation and prosecution. The only one in the United States that's signed by the United States Attorney, the Lummi Indian Tribe, the State of Washington, and the County Sheriff and County Prosecutor. And we're all abiding by it, except we see nothing going to court at the Federal level.

Senator MCCAIN. Send us a copy of your correspondence with the U.S. Attorney, would you?

Mr. HALEY. Yes.

Senator MCCAIN. Judge Manuel, I just had one question. Actually I have two. I wonder when you have time to perform your judicial duties when you are here in Washington so often testifying on various issues.

Judge MANUEL. I've only been here twice this year. I know it seems like a lot, but——

Senator MCCAIN. Well, we appreciate the outstanding job you do.

Part of Tohono O'odham Reservation borders on Mexico. There are significant problems with drug trafficking through your reservation. What is your view of how serious that situation is, and how successful are the efforts that are currently being made to stem this tide?

Judge MANUEL. Well, as you know, we have been working with the Congressional delegation trying to impress not only upon key members of Congress, but also the Bureau, that the trafficking of not only drugs but also illegal aliens is very high and significant on the Tohono O'odham Reservation.

One of the facts that I always point out to people who ask me anything about that particular problem, is that the U.S. Customs, which it does have an all Indian office and works closely with the Tohono O'odham Police Department in the detection and the interdiction efforts that they carry out, has the highest seizure rate in the United States in the Tucson area. And a great deal of that comes right off of Tohono O'odham. I had some statistics that I brought up with me this trip, statistics that include U.S. Customs, Border Patrol, and the Tohono O'odham Police Department for 1987 and 1988 on the amount of marijuana that was seized, and did not include this first quarter, which I'm sure you are aware earlier this year there was a $60 million cocaine seizure that was made by U.S. Customs and the Tohono O'odham Police Department. So it is a very significant problem. And the resources that are available, not only to the Tohono O'odham Police Department but also to U.S. Customs, are not enough. The manpower is just not there to carry out the kind of detection that need to be carried out.

Senator MCCAIN. As you know, largely due to the efforts of my colleague from Arizona, we will now have aerostatic surveillance which will, and already has, dramatically cut the air trafficking of drugs into our State. And indications are already that traffic such as you've experienced will dramatically increase on the ground, through your reservation. Is that an accurate statement?

Judge MANUEL. Yes; that's very true.

Senator MCCAIN. Then we'll have to prevail upon my colleague from Arizona to get us some more resources on the ground, as well. And I don't mean to make light of that, because largely due to Senator DeConcini's efforts we do have that enormously effective tool, and I think we now need to turn to try to help you some more in your efforts. And one of the initiatives that Senator DeConcini has sought is the designation of that area as a high intensity drug area, and perhaps that may help us get some more assistance for it.

Judge MANUEL. I'm very aware of Senator DeConcini's work and his support. And I'm very thankful for that. And I don't think that there will be any problem getting the designation as such, because that is—the statistics bear that out.

Senator DECONCINI. If the Senator would yield.

Senator MCCAIN. Before I do, I do want to thank you for your efforts in that area.

Senator DECONCINI. I think, Judge Manuel, you'll confirm that last year the Congress designated additional funds for the Tohono O'odham law enforcement, as well as, I believe, for your reservations, and the BIA cut those funds. Is that accurate?

Mr. HALEY. That's accurate.

Senator DECONCINI. Because I remember in the markup, particularly for the Tohono O'odham, we also designated or earmarked money for law enforcement and the BIA cut it out. So you didn't get it. And it just is indicative of the problems that we have faced here. I realize they have budget restraints, but the Congress came down very clearly in recognizing the tremendous problem you have and then were not able to fund it.

Judge MANUEL. Well, that was the reason I brought the stats with me, so that I could leave them off here.

Senator DECONCINI. Yes, I wish you would leave them with us. I have seen them on those areas, the Tucson area, but I'd love to see the ones that are tied directly to the Tohono O'odham Police, because you've suffered a great deal, including the killing and beating up of several officers there from drug dealers.

I just want to compliment you, Judge Manuel. I'm sure your tremendous record of judgeship and lawyership stems from working in that outstanding County Attorney's office in Pima County.

Judge MANUEL. Yes. [Laughter.]

Senator DECONCINI. I have no further questions and the committee will stand in recess until 2 o'clock this afternoon.

Thank you very much.

[Whereupon, at 12:16 p.m., the committee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Senator DECONCINI. The Special Committee on Investigations will come to order.

I want to welcome you, Mr. Nessi, and take this opportunity to thank you for your cooperation and your department's cooperation with our investigation. We appreciate your responsiveness to our committee's requests for information and contacts and leads. As you know, our committee requested thousands of documents, and your field office responded quickly and completely, as far as we are concerned, and that was not the case with all the field offices of all agencies, but it certainly was with yours.

We also appreciate your working with our staff during the past two weeks to review our findings in the area of HUD administration of Indian housing contracts and to come up with constructive solutions to problem areas. We have dealt with many agencies during our investigation, and HUD has certainly been one of the more cooperative ones.

Counsel Brandolino will do the questioning, and you may commence.

STATEMENT OF DOM NESSI, DIRECTOR, OFFICE OF INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. **Brandolino**. Thank you, Mr. Chairman.

Mr. Nessi, I understand that you have a few statements to make on behalf of Secretary Kemp.

Mr. **Nessi**. Senators, the Secretary has a letter that he will be submitting for the record. The letter has not been signed off on yet, so we will have to submit that at a later date.

But Secretary Kemp has expressed his commitment to making this program be as good as it can be. He has expressed his commitment to working very closely with this committee for the duration of their investigation so that we can develop some solutions to some of the items that you have uncovered during this period, and we will continue to cooperate with you very carefully and closely over the next few months.

Mr. **Brandolino**. Could you state for the record your title at HUD?

Mr. **Nessi**. Yes; I am the Director of the Office of Indian Housing.

Mr. **Brandolino**. And you report directly to the Assistant Secretary for Public and Indian Housing?

Mr. **Nessi**. Yes, I do.

Mr. **Brandolino**. Mr. Nessi, how many dollars are spent per year by HUD for new construction units for Indian housing?

Mr. **Nessi**. The appropriation level has varied over the last few years, but it is generally between $90 million to $150 million, which would translate into anywhere from 1,200 units to 2,000 units.

Mr. **Brandolino**. And who is responsible for administering the construction of these units?

Mr. **Nessi**. The program works that the funds are allocated from HUD to Indian housing authorities, who have the primary responsibility for contracting, developing the units, and managing them.

Mr. **Brandolino**. Mr. Nessi, this committee's investigation into Indian housing in the past year has gone far beyond the review that we will discuss today. We have been in touch with employees of Indian housing authorities and residents of Indian housing throughout the country. But today, for this hearing, we would like to discuss the results of our review that we have conducted on 24 Indian housing construction projects.

As you know, we have worked with you in the past six months to assist us in this investigation and to review the findings.

First, let me explain a little bit how we obtained the sample of 24 projects. A dozen projects were selected, as you know, with some of the largest projects completed by HUD in the past 3 years. And another dozen projects were selected on the basis of enhancing geographic dispersion and also project values.

In total, these 24 projects are worth about $92 million.

Some months ago, the committee requested from your office a long list of documents relating to each of these 24 projects; is that correct?

Mr. NESSI. Yes, it is.

Mr. BRANDOLINO. And your field office has provided numerous boxes of documents responsive to these requests?

Mr. NESSI. Yes.

Mr. BRANDOLINO. Our investigation of these projects has revealed some problems areas in the administration of these contracts that caused dollars to be wasted—dollars that could be used to provide much needed additional housing units. You have been working with our staff over the past six months to review these problems and suggest solutions; is that correct?

Mr. NESSI. Yes, I have.

Mr. BRANDOLINO. Has this review been helpful?

Mr. NESSI. The review has been—throughout the duration of the investigation, we have been able to pinpoint a number of areas that your staff members have brought up, and have highlighted some areas where we have already begun to make some changes. It has been very helpful, from our perspective.

Mr. NESSI. Why don't we discuss a few of the problems that we have uncovered. First, in the projects that we reviewed we have found poor architectural services to be common. We found that inadequate design or engineering on projects has necessitated later changes during the construction phase. These later changes translate into the spending of dollars that could have been avoided.

As an example, on one project, defects in engineering and design resulted in hundreds of thousands of dollars worth of additional construction that was needed at the later phases of the project.

Mr. BRANDOLINO. According to HUD guidelines, isn't HUD responsible for approving contracts entered into between architects, engineers, and Indian housing authorities?

Mr. NESSI. Well, our requirements are to concur in the approval of the housing authority's selection of an architect or an engineer. We do not take place in the actual review of their qualifications.

Mr. BRANDOLINO. So when a contract is entered into between an Indian housing authority and HUD, or with an architect, you only review that contract and make sure that proper procedures are followed?

Mr. NESSI. That's correct.

Mr. BRANDOLINO. According to HUD guidelines, isn't HUD responsible also for reviewing architectural plans once they are created?

Mr. NESSI. That's correct.

Mr. **Brandolino**. Given that HUD is responsible for first approving architectural contracts, shouldn't HUD be able to disapprove contracts with architects which may not be up to the level that they should be, or maybe incompetent?

Mr. **Nessi**. Well, it is difficult for us to make a qualification judgment on an architect unless we do a review of our own. We have a debarment process and a denial of participation process that we do utilize when contractors or any participant in our program is violating the program. But, for the most part, we rely on the Indian housing authorities to make the qualification decision.

Mr. **Brandolino**. How about in reviewing plans? Shouldn't HUD be able to review plans and, before they approve them, find any defects in the plans?

Mr. **Nessi**. Well, we do review and approve plans right now. One of the items that we particularly look at is the cost of the unit, and in that regard we do have cost analysts on board.

One of the areas where your investigation has pointed out some deficiencies that I think we'll all agree with at HUD is that we are not doing as in-depth a technical review as we could, and that is partially due to the fact that we do not have staff architects or staff engineers in the field any longer.

Mr. **Brandolino**. So there are no architects and engineers in the field that could review these plans?

Mr. **Nessi**. No, there are not.

Mr. **Brandolino**. And contractors, as well as architects, are responsible for some of the areas that we have seen that cause later dollars to be spent. Shouldn't HUD catch any problems in construction during the construction process by inspection?

Mr. **Brandolino**. Well, I think no matter how many inspections you do there will always be some problems with construction.

One of the areas where we need to strengthen this process is that over the years I believe there has been some misunderstanding as to who has responsibility on various items. HUD's construction analysts go out approximately every four to five weeks, and they really don't do a full inspection of the unit. We call our review "monitoring." Monitoring of the unit is to check to see if acceptable progress has been made.

Housing authorities hire inspectors to be on the project on a daily basis, or close to a daily basis, and to work with the local general contractor and with the architect.

Also, the architects and engineers charge for inspection services.

Mr. **Brandolino**. So HUD's role is merely performing a final inspection once construction is done, and the Indian housing authority inspectors are responsible for reviewing the progress of construction? Is that fair to say?

Mr. **Nessi**. We're responsible for the progress of construction, and we do get out there, as I said, approximately every four to five weeks. But the Indian housing authorities who are on site every day have the primary responsibility to ensure that this takes place.

Mr. **Brandolino**. Then why is it that some Indian housing authority inspectors may be missing some of the obvious defects that we have found in the projects that we have reviewed?

Mr. **Nessi**. In those areas, it is most likely because that particular inspector either did not have a full grasp of construction and may not have had the qualifications to make those decisions.

I would like to add that over the past five to six years there has been tremendous improvement in the quality of construction, and that there is no question that this was an area that was lacking in the late 1970s. It is primarily due to the Indian housing authorities' efforts that this has turned around.

Mr. **Brandolino**. And you seemed to mention that there were no minimum training requirements or educational requirements for these inspectors?

Mr. **Nessi**. No, there are not.

Mr. **Brandolino**. There are not?

Mr. **Nessi**. No.

Mr. **Brandolino**. In fact, isn't it true that any employee of an Indian housing authority, whether it be the inspector or the executive director, is not subject to minimum qualification standards?

Mr. **Nessi**. That is correct. From HUD's perspective, those would be local decisions of personnel practices and hiring that we have felt should be made at the local level.

Mr. **Brandolino**. Would you agree that there may be some incompetent inspectors out there currently inspecting HUD's housing projects?

Mr. **Nessi**. Yes; I would.

Mr. **Brandolino**. You have mentioned a lack of personnel at HUD that have expertise to review specifications. Are there any other reasons to explain why our investigation may have found inadequate architects or defective plans to be common in the projects that we have reviewed?

Mr. **Nessi**. Well, I think one of the items that we have been facing over the last few years is that there really are not a lot of architects and architectural firms available to bid on plans and to design units. Many housing authorities would like to become more aggressive in designing a structure that suits their needs, but because there has been a very few number of firms, we tend to have the same plans come in year in and year out. Many times that may breed among some firms—not all, but some—some complacency.

Mr. **Brandolino**. You said lack of competition among firms. Are you saying there are not many architectural firms in this country?

Mr. **Nessi**. Well, as a result of the Indian preference regulations where two qualified firms are all you need for bidding, we will tend, in many cases, just to have two or three firms.

Mr. **Brandolino**. And so you are saying there are not enough Indian-owned architectural firms, whether they be qualified or not?

Mr. **Nessi**. That's true. Certainly, as we discussed the last time, we do have a commitment to Indian preference and would like to see Indian preference furthered whenever we can. On the other hand, there may be times where the lack of competition may have some problems later down the road on a project.

Mr. **Brandolino**. During our review of these projects, our committee also found that it seems to take a long time to complete a project once funds for units have been allocated. Although our sample projects, to be fair to HUD, included some of HUD's larger projects, we found projects taking an average of over six years to be completed, even on smaller projects, like on one 21-unit project that took six years to complete, and another 19-unit project took five years to complete, and a 22-unit project took nine years to complete. Do you think that it is simply taking HUD too long to build Indian housing units?

Mr. Nessi. On those particular projects it is unquestionably too long.

Over the past seven years, this is an area where I do believe the department has made considerable progress. We have looked at our pipeline, and of the projects that were reserved after 1981, 75 percent of them were completed within the statutory requirement of 900 days from reservation to start. In fact, the average was 750 days.

Since 1985, that average has dropped to 597 days, and 94 percent were completed within the statutory requirement.

But one item that your investigation brought out that I don't feel that we have completely addressed is that when a project does go wrong, for whatever reason, we seem to have a difficult time getting it back under control—typically one problem that sends it on its way towards a six- or seven-year process.

We get involved at the HUD level. The housing authority still has the main responsibility, but frequently HUD and the housing authority may have a disagreement on how to pursue. Sometimes we may even be an obstacle in the housing authority's completion of this project.

I think what we have done is planned for the perfect project, and now we need to start looking at some recommendations as to what we are going to do when we have a problem.

Mr. Brandolino. Another problem that we have found in the projects that we have reviewed is that projects seem to have excessive costs for architectural and engineering services and for site improvement—the site being where the units are built.

As to architectural fees, HUD approves contracts as a standard in the industry that allows fees based upon costs. On some projects reviewed by our committee, we found HUD being billed $40 to $60 per hour for costs that included the xeroxing of plans or performing routine paperwork.

As to site improvement costs, HUD guidelines say that HUD is responsible for improving sites that are economically capable of being developed; however, our committee has found that high site improvement costs are common. On one project, the site improvement costs were actually more than the cost of constructing the unit.

Can you explain these high costs?

Mr. Nessi. I think part of that is due to the geographic locations that we build in. It is true, as you say, your investigation pointed out that many times site improvements are very expensive by urban standards, and I think you would find that to be a trend through many other projects that you didn't look at. Where we build a project in Oklahoma or in the Seattle, Washington, area, I think you'll find the site costs in line.

But there are just some difficulties that we deal with in terms of provision of off-site water and sewer, roads, where there is just no infrastructure available and we do place all of that infrastructure on the units. So many times site improvements are very expensive.

I should add that there are some housing authorities that literally have no good sites to build on, but that is their homeland.

Mr. **Brandolino**. So it just may be inevitable that site improvements costs will be high?

Mr. **Nessi**. I think that will always be a part of the program.

Mr. **Brandolino**. We found in projects, also, that HUD commonly failed to obtain written assurances that necessary utilities would be available to the sites or rights of way would be available to the sites, and this sometimes resulted in units constructed without assurances that utility services or rights of way would be available when the units were completed.

Is it true that, according to HUD guidelines, HUD is responsible for obtaining these written assurances before the project starts?

Mr. **Nessi**. Yes, that's true.

Mr. **Brandolino**. Can you give any reason why that may have been the case in the projects we have looked at?

Mr. **Nessi**. As we have talked about, many of the projects that you have looked at were fairly old projects which were reserved in the late 1970s and early 1980s. Again, your investigation found an area in which we were deficient in the late 1970s. Many times units were built before leases were handled.

As the director in the Denver office, I frequently was involved with cases later on where we did not have clear title.

We had, as early as 1983, implemented a number of procedural changes which simply do not allow the property to begin construction without all of those assurances.

Of course, many times you will have cases—particularly in some of these projects—that seem to go on forever, where the assurances that you once had, people will back out on after a period of time.

Mr. **Brandolino**. We've discussed a number of HUD guidelines where HUD has duties such as to obtain written assurances before projects start and to review architectural plans and to approve contracts. And it seems, given these guidelines, that HUD has a great deal of control over projects. But from what I hear from you today, you seem to say that that control really isn't what the guidelines make it appear to be. Why is that?

Mr. **Nessi**. Well, the handbook that you used was a handbook that was written in 1976.

Mr. **Brandolino**. But it is still valid today. It is still being used.

Mr. **Nessi**. Well, it is still the handbook that we use. We have just recently put into clearance a brand new handbook which will update the procedures and clarify the ambiguity between the Indian housing authorities and HUD.

There is no question that right now there is quite a bit of ambiguity on who is responsible to do various items. We have tried to put into the hands of the housing authorities as much responsibility and authority as we can. Where we have been clear about what their responsibility and authority is, Indian housing authorities have had no problem in accepting that. It is in certain areas where we seem to go back and forth on who really must do something that we have problems. I believe this handbook will clarify many of those issues.

I should also add, too, that we will not take 14 years to replace that handbook. We will continue to update it as situations arise where it needs to be clarified.

Mr. **Brandolino**. Are these handbooks regulations that are—they are not regulations that are published in the Code of Federal Regulations?

Mr. **Nessi**. No, they are not.

Mr. **Brandolino**. So they are internal guidelines?

Mr. **Nessi**. Yes, they are.

Mr. **Brandolino**. Do Indian housing authorities and the Indian community have any say in the creating or revision of these guidelines?

Mr. **Nessi**. Well, I personally frequently meet with Indian organizations and Indian groups, and they will have access to the handbooks, and if there are major areas of concern to them, we will look at changing them.

Mr. **Brandolino**. But is there any formal process in place where they are assured that they will have some type of input?

Mr. **Nessi**. Handbooks are not sent out for public clearance. Those are internal HUD processing guidelines.

The laws require that anything that has a substantial impact on funding or areas where it may have truly a major impact, they should go out for Federal Register comment. These handbooks are just to clarify the Indian housing regulations as they stand right now.

Mr. **Brandolino**. Getting back to one of these guidelines that you mentioned before that HUD must review architectural plans and approve them, it seemed distressing to us that HUD did not have any architects on staff or professional people to review the plans carefully beforehand. Would you agree that if such people were on staff and projects were reviewed carefully that dollars could be saved when defects are caught in the beginning stages?

Mr. **Nessi**. Well, I would agree that if we had architects and engineers and we took the plans out and went on site that yes, there would be times where we would catch errors before they took place. I don't believe we would catch all of them. I think it is just the nature of this area that sometimes good architects simply make mistakes. But I would like to see us do a more thorough review.

Mr. **Brandolino**. How long have you been director, Mr. Nessi?

Mr. **Nessi**. Nine months.

Mr. **Brandolino**. Nine months?

Mr. **Nessi**. Yes.

Mr. **Brandolino**. Since you have been director, has HUD made any attempt to maybe get such professional people on the staff? Why is it that no attempt has been made to get these—let me ask another question: were there ever architects or professional people on the HUD staff?

Mr. **Nessi**. Yes. At one point there was a large technical services staff in all HUD offices.

Mr. **Brandolino**. And what happened to them?

Mr. **Nessi**. Well, I think as HUD programs slowed down, that was one of the areas that was cut back in.

Mr. **Brandolino**. I have no further questions.

Senator **DeConcini**. Thank you, counsellor.

Mr. Nessi, what is the appropriation for Indian housing in the year we are in now? Do you know roughly?

Mr. **Nessi**. At present it is zero. No dollars for new units.

Senator **DeConcini**. For 1989?

Mr. **Nessi**. Yes.

Senator **DeConcini**. The fiscal year we are in now?

Mr. **Nessi**. I'm sorry. No. It is approximately $90 million.

Senator **DeConcini**. It's $90 million?

Mr. **Nessi**. For 1,243 units.

Senator **DeConcini**. Was that 443?

Mr. **Nessi**. No, 1,243.

Senator **DeConcini**. For 1,243 units. And my recollection is that the budget request for 1989 from HUD or through OMB was for no funding; is that correct?

Mr. **Nessi**. I believe for 1989 we asked for 1,000 units.

Senator **DeConcini**. Did you ask for 1,000?

Mr. **Nessi**. Right.

Senator **DeConcini**. You've asked for none this year?

Mr. **Nessi**. That's correct.

Senator **DeConcini**. Do you know why that is, other than monetary reasons? Is it——

Mr. **Nessi**. No, Senator, I do not.

Senator **DeConcini**. It doesn't have anything to do with this investigation or problems that have been uncovered?

Mr. **Nessi**. No. I don't believe so.

Senator **DeConcini**. I was under the impression that in 1989 the Administration didn't ask for any but that Congress went ahead and appropriated. That's not your recollection?

Mr. **Nessi**. I believe the Administration proposed 1,000 units in 1989 and Congress put in 1,243.

Senator **DeConcini**. And how about the year before? Are you familiar with any of the years before that?

Mr. **Nessi**. My recollection is for the past five or six years prior to 1989 the request was for zero units.

Senator **DeConcini**. Zero units? But Congress appropriated funds for it anyway; is that correct?

Mr. **Nessi**. Yes, Senator.

Senator **DeConcini**. What kind of problems—I think it is pretty obvious, but what kind of problem does that pose to you when there is no request and then the money is given? Is HUD prepared to handle that when there has been no request made?

Mr. **Nessi**. Well, from both the HUD and the housing authorities' standpoint there are issues which we need to deal with when we are not sure whether we are going to have a program or not.

From HUD's standpoint, certainly it is the fact that we start to look at reducing staff levels, and then when we have units we may not have the staff available.

The housing authorities face a very similar problem in that they hire development coordinators when they have a project. If they don't know they are getting another project any time in the near future, they let those people go. So we lose some of the experience that they had.

The other item is that, because we don't know when we're going to have a project, we don't really plan for them at the local level.

Senator DECONCINI. In 1987, as you may recall, the "Arizona Republic" documented the existence of housing units on various reservations that were built without electricity and without utilities. I have visited some of those on the Navajo Reservation.

Today we have discussed our findings that HUD, one the departments this committee has reviewed, commonly failed to obtain written assurance from utilities and rights of way that rights of way were available on proposed housing sites. Do you think HUD's failure in this regard is the reason for these units being built without electricity and other utilities? Are you familiar with any of those cases?

Mr. NESSI. I am familiar with the two projects that your staff and I have discussed. On one, there was temporary electricity to the site to build the unit and an agreement between the tribe and a local co-op, and the local co-op backed out of the agreement because of an issue with the tribe.

On another issue down in California there is apparently a disagreement between Indian Health Service, a local county, and a tribe, and the local government will not allow a sewer line to be built across a road.

I think we do have those issues, and they do occur.

Senator, I do feel comfortable that we are now spending a lot of time on this particular item to assure that projects have facilities.

Senator DECONCINI. Can you assure us now that there are no such projects either under construction, constructed, or planned that do not have all the utilities agreed to before the construction would start?

Mr. NESSI. I can assure you that when I get back to the office I will call six office directors to find that information out and make sure that that is not the case.

Senator DECONCINI. You will provide us with that answer?

Mr. NESSI. Yes, I will.

Senator DECONCINI. Thank you.

Senator MCCAIN. Mr. Chairman, could I ask some questions?

Senator DECONCINI. Yes.

Senator MCCAIN. Have you found out how this situation evolved in the first place?

Mr. NESSI. Well, I think there was a period of time where we were actually having so many units in the pipeline that projects were getting backed up, and that between HUD and the Indian housing authorities we were just unable to handle what was a larger workload in the late 1970s.

I believe that, at times, in order to make construction starts and to make goals, we just went forward.

Senator MCCAIN. If you will indulge me, Mr. Chairman, it seems to me that even though they were backed up, somebody was responsible for this problem. I hope that you will not just chalk it up to too many housing projects in the pipeline, but find out who was responsible for it and take whatever action is necessary.

Mr. NESSI. Senator, we can look into some of these projects. I know there is one right now in California which is still an issue where they do not have water and sewer. We will look into that.

Senator MCCAIN. Thank you, Mr. Chairman.

Senator DECONCINI. I appreciate that, Senator McCain. I'm glad you pursued that, because I really would like a report on any existing projects that are still in that problem area and some assurance, in writing, if you can, that it has been changed.

Senator DECONCINI. The other thing I would like to know, which I think would be helpful for our report, is what procedures have been in place to see that this might not happen again. Can you do that?

Mr. NESSI. Yes, I will.

Senator DECONCINI. Senator McCain, I have been asked to come down to the Constitutional Subcommittee in Judiciary right below us to mark up and vote out a bill that is very important to you, and that is the Line Item Veto Amendment, which I am going to vote out, even though I don't support the bill, because I know you are a strong supporter of that. I wonder if you would take over for about ten minutes and just proceed with these witnesses?

Senator MCCAIN. I'd be glad to, Mr. Chairman. I think you are on a mission of mercy. [Laughter.]

We appreciate your dedication and sacrifice on this issue.

Mr. Nessi, I'd like to talk about another aspect of Indian housing which has bothered me for many years. Is it true that the general practice of methodology that is required to build an Indian housing unit is that there is a certain amount of money that will be spent on each unit? Is that right?

Mr. NESSI. What we do—it's not really per unit. We allow an overall per unit cost for planning purposes, but there is no requirement that that number of dollars must go into each individual unit. Sometimes, depending on the size of the units, some cost more than others.

Senator MCCAIN. In other words, there would be "X" amount of dollars allocated for 50 homes?

Mr. NESSI. Yes, sir.

Senator MCCAIN. Now, according to law, that construction is dictated by the Davis-Bacon Act, which calls for the payment of "local prevailing wage" as I understand; is that correct?

Mr. NESSI. That's correct, Senator.

Senator MCCAIN. Now, when I was on the House Interior Committee we had testimony from tribal leaders who stated that this added almost invariably 20, 30, or 40 percent additional cost to the construction of a unit. Do you have information on that?

Mr. NESSI. Senator, the last time I appeared before this committee you asked me to complete a report on that, and I do have that report completed and will send it over to you.

Basically, the information that we received varied in different parts of the country. In some cases, I think it related to the amount of time that the people who worked on it in the field spent on it.

We found in the midwest—Oklahoma and some of those areas—there was virtually no difference. In the State of Arizona we found a difference of anywhere from 10 to 20 percent. In another area I believe the percentage was almost 50 percent.

I don't have those figures with me, but I will send that report over to you.

Senator **McCain**. Does it seem justifiable to you, given the relationship that the Federal Government has with tribal governments—obviously a sovereign nation relationship—that those tribes, themselves, should be allowed to determine whether they want Davis-Bacon to apply to the housing projects on their sovereign lands?

Mr. **Nessi**. Senator, I would like to see tribal sovereignty take precedence wherever possible. Although I am not an expert on Davis-Bacon, we have been working with the Tribal Employments Rights Organizations recently—TERO—in order to see if they can work with the tribes to have prevailing wages in those areas that truly meet local conditions.

Although it is not removing Davis-Bacon, it is at least getting correct figures so that the tribes will not be spending more than they need to.

Senator **McCain**. Good. There is obviously a critical need for housing on Indian reservations. I can't, for the life of me, see why we should waste funds for housing because of some requirement for a "prevailing wage" which is, in my understanding, as far away as 500 or 600 miles away that would be the "prevailing wage"—at least in Arizona. Frankly, I find it obscene that we should deprive Indian leaders of those funds because of the clout of organized labor. Frankly, I think the Indian people deserve better.

I have no more questions.

Senator Daschle.

Senator **Daschle**. Thank you, Mr. Chairman.

I would just like to go back to some comments you made earlier with regard to the availability of housing.

I wish I could recall, but it was about a year ago when, in the Select Committee, we took up the issue of available housing. I recall the witness—and I don't recall the statistic—but the witness, and it was confirmed later by subsequent witnesses, indicated that there is just an overwhelming need for Indian housing and that it was—I want to say something to the effect that it may be 70,000 to 80,000 units short, and that it will take maybe 20 years at 5,000 or 6,000 a year to catch up if we really did want to put our resources to that goal.

First of all, is that your understanding? Is that far off?

Mr. **Nessi**. Senator, actually the number that you probably received last year was the results of a BIA needs survey which was 92,000 units. This year, the BIA needs survey was 98,000, I believe.

Senator **Daschle**. So that is 98,000 houses that we need. I think you told me—and I know you're not responsible for decisions with regard to the numbers you are given—that HUD had not budgeted any; is that correct?

Mr. **Nessi**. That's correct.

Senator **Daschle**. So even if we go at the rate Congress has now approved, which is about 1,200 a year, we are talking about 80 years. And who knows what the need will be in 80 years? That sounds to me like an incredibly insurmountable problem, given these trends.

You've got a trend that says 98,000 units, and you've got a response in government that says zero or 1,000. What do we do with it? How do we address that? You work with it every day. It is your responsibility not only to see that we have quality housing, but to see that there be some housing. What would you tell this committee about the prognosis? And secondly, in more of a specific sense, what is the answer, given those figures?

Mr. **Nessi**. I agree with your assessment, Senator, that the prognosis is only going to be more people needing housing at this point.

One of the items that we have talked about is to establish a small working group with the Indian housing authorities and tribal governments to establish and look for alternatives to the current housing program where we might be able to leverage some private sector funding with government funds.

There is really no reason right now why we need to continue to live with legislation that has been around since 1937 in provision of this type of housing. Last year we had really the first change in this program in the 25 years that it has been established.

Senator **Daschle**. I'm not sure I know what that change is. What is the change?

Mr. **Nessi**. The passage of the Indian Housing Act of 1988, which established basically separate provisions for Indian housing, as opposed to public housing.

Senator **Daschle**. That's right. And the separate provisions we are talking about are the 1,200?

Mr. **Nessi**. Yes.

Senator **Daschle**. Wouldn't that make a mockery of—and I emphasize here that I'm not putting any responsibility for this on you, personally, but doesn't that sort of make a mockery of this whole thing? We say we need 98,000 houses, and now we're going to pass this revolutionary new bill that we haven't had any change in in 25 years, and it is like this guy coming in with a bazooka and a drop of water drips out the barrel. That's our response.

Mr. **Nessi**. Senator, it is the most difficult issue that I ever try to answer when I visit with tribal governments or Indian housing authorities or Indian people, in general.

It is difficult, right now, with some of the budget constraints that we are facing, to decide where the priorities are. At this point, it has been zero for Indian housing for that past few years.

Senator **Daschle**. We could go on in this vein for some time, but we had the Secretary, this morning, say that the two most incredible needs that we have are—well, first of all, he said the most important need we have is education, and I certainly don't take anything away from his emphasis on that priority. But then he said that health is also a very important need.

You see something like this—98,000 units, and we're dripping out 1,000 a year—and I don't know how conducive an environment you have to both better health or better education if you don't have any place with a roof over your head.

In South Dakota the wind chill in the winter time gets to be 75 below zero. It is not unusual at all on a daily basis during the winter to have frozen bodies out on the side of the road. Had I not seen one, I guess I wouldn't feel so unbelievably frustrated at our inability to deal with this more effectively.

We sit here in the comfort and warmth of a beautiful office building, and it is pretty hard to put yourself on the side of a road with 75 degree below zero weather, but that's what we're talking about here.

I don't know. I guess we ought to take this up in the full committee.

The other thing that makes it all the more outrageous is what I've been in houses on the reservation. I stayed in one overnight once, and there was a four-inch gap between the wall and the ceiling at the top. The braces underneath the floor, instead of being 18 inches were 36 inches apart, so the floor swayed.

There was one electrical unit in the whole house that worked, and they had extension cords going from every room to that one wall unit, and there was this great big collection of extension plugs that went into that one unit so they could get all the cords in there. They had the frying pan in there. They had the hair dryers in there. They had room heaters going in there. All were going into one little receptacle in the hallway with cords coming out of every room.

It makes you want to scream when you see that kind of thing.

They showed me where the heater units on the side were installed, but then they took me underneath the floor, and all the cords for those heater units were just dangling there. They weren't hooked up to anything. They were just there for looks. That, to me, was more of an education about Indian housing than anything I have seen since coming to Congress, and I don't think we're responding to it at all, frankly. It is as much a responsibility of the Congress as it is the Administration.

But I tell you what, we really have to put some emphasis on solving this thing and not just casually say—and I'm putting this on me, too. We can't all collectively just casually say, "Well, we'll have to deal with it next year. We've got 1,000 units this year, and we'll take 1,000 next year, and maybe in 98 years we'll solve this problem. And, at the same time, we're going to put a priority on education and health care."

Senator DECONCINI. Would the Senator yield just for a question? Is this something current that you just——

Senator DASCHLE. Well, it was in the last couple of years.

Senator DECONCINI. Last couple of years.

Do you know anything about this particular housing?

Mr. NESSI. Not this particular house. I have spent many, many days in the State of South Dakota when it was very cold. In fact, as the director of the Denver office I frequently went out in the winter time so that I could see the conditions. The Senator is correct. Many of the units that were built in the early 1970s had poor decisions made on energy concerns. We have put electricity in units rather than propane or better energy sources. There are problems in existing units today.

Senator DECONCINI. If the Senator would yield again, our experience—at least mine—has been particularly with the relocation housing, which you don't have to take that blame. But it is the same idea, if you can imagine building a house and not having electric in it and not even having a meter outside the house because there is no electricity.

It is not only Native Americans in Arizona who are subject to that. I'm sorry that your State has witnessed the same thing. Excuse me for interrupting.

Senator **Daschle**. I have carried on long enough. Mr. Nessi, you just happened to be sitting there, so I focused my frustration on the nearest target, I suppose. But I know that you have an opportunity to do something about it, and I know that you have to deal with it every day. I don't want to lecture you and come in and spout off angrily. You've got to deal with it.

The message, I guess, would be the same as it was with the Secretary. I really do hope that out of this there is going to come something. I don't want to talk about this in five or ten years again and lament how bad things are. If that's all we did in this whole exercise, we have probably done more harm than good, frankly, because there are too many people out there that get their expectations up there every time we say we're going to help.

And then we go out there and make some great statements because we are genuinely concerned, but because everybody gets so taken up in everything, we forget—not forget, but we get pressed by too many other priorities. This has got to be a higher priority than Congress has given it.

It is unbelievably measly for us to be talking about 1,000 units when you've got 98,000 people out there and, in South Dakota, at least, people freezing to death.

Talk to me about China or Bangladesh or anyplace else. We've got the problem right here in South Dakota.

That's all I have to say, Mr. Chairman.

Senator **DeConcini**. I think the point is well taken, Senator Daschle. I share your absolute frustration and dismay at where this country is going.

I do want to thank Mr. Nessi for agreeing to at least give us what procedures he has taken, and to check to see that there is nothing like that pending. That will be helpful to us in our final report.

Senator McCain, any other questions?

Senator **McCain**. No thank you, Mr. Chairman.

Senator **DeConcini**. Thank you very much.

Mr. **Nessi**. Senator, I do have the letter from Secretary Kemp to submit for the record.

Senator **DeConcini**. It will appear in the record.

Mr. **Nessi**. Thank you very much.

Senator **DeConcini**. Thank you.

[Letter of Secretary Kemp appears in appendix.]

Senator **DeConcini**. We now will have a panel of distinguished people who will give us some information on timber—one of the areas that we did not neglect, but is a very technical area, I am finding out. We are going to examine the Indian timber industry and the involvement of the Bureau of Indian Affairs in the management of this natural resource.

It is widely recognized that the Federal Government has a trust responsibility to manage and to assist in the management of Indian resources. The courts of the United States have consistently recognized this special trust relationship that the United States owes to Indian tribes and their members.

Mismanagement of natural resources has come under increasing scrutiny as tribes have sought legal redress when the government has failed to meet its trust obligations.

The importance of forest resources to Indian people is profound. Throughout the country, 155 Indian reservations have forest property located in 23 States. On 25 reservations, forest resources provide over 50 percent of the revenues generated for tribal programs. In 1988 alone, income from the sale of Indian timber exceeded $72 million, revenue that is often critical to tribal economic and social development.

Clearly, Indian timber is an immensely valuable natural resource. In the process of reviewing the timber industry, it will be necessary to examine and to discuss the management of other natural resources found on Indian lands. The close inter-relationship of natural resources cannot be ignored. Decisions affecting timber harvests impact a variety of other natural resources: fish, wildlife, and water, just to name a few.

It is critical that BIA fulfill its trust responsibility fully in this area.

Senator DeConcini. We are pleased to welcome this afternoon a distinguished panel. I would ask that they come forward and be seated as I call their name: Mr. Roy Sampsel, President of R.H.S. Resource Consultants; Mr. Fred Matt, President of Intertribal Timber Council; Mr. Ron Trosper, Tribal Economist, Pablo, Montana; Dexter Gill, Director, Navajo Forestry Department, Window Rock; Gary Morishima, Executive Board Member, Intertribal Timber Council; James Spitz, Forestry Consultant; and Marshall Cutsforth, Chief, Division of Forestry.

Mr. Mickum. Senator, may I just add that Samuel Miller, who is the Chief of the Division of Water and Land Resources, is also accompanying Mr. Cutsforth.

Senator DeConcini. Mr. Mickum, go ahead.

Mr. Mickum. Thank you, Senator.

Mr. Sampsel, do you have an opening statement you would like to make?

Mr. Sampsel. Yes, I do.

STATEMENT OF ROY SAMPSEL, PRESIDENT, R.H.S. RESOURCE CONSULTANTS, PORTLAND, OR

Mr. Sampsel. Thank you very much.

On behalf of the panel that appears before you this afternoon, we would like to thank the Special Committee and its staff for allowing us the opportunity to appear before you and to discuss this most critical issue to Indian tribes and Indian people.

Let us, if we might, take the time this afternoon to have a dialogue which will lead us towards the resolution of some of the issues that will be discussed and to set forward an agenda that we may cooperatively work towards together.

Those of us who are here today represent but a small part of the affected tribes and interested parties in this issue, but I hope that we will be able to advance your investigation and to lead to some positive actions on behalf of Congress.

I have a couple of statistics before we get started. Indian timber is of great value to Indian tribes and to Indian land owners. But last year, alone, because of our inability to harvest the allowable cut on Indian lands, $25 million of lost resources to Indian tribes was not recognized or not realized.

If you take that statistic and put it over the last years since 1970, the last 19 years, 4.8 board feet of timber has not been harvested, at a loss of some $417 million to Indian tribes and Indian individual land owners.

I think it is a statistic that, as we have our discussion today, will lead us to the realization that, in fact, the United States, its Executive Branch, those that have direct responsibility for administering the laws related to Indian resources and the trust, are not fulfilling that responsibility, and that if, for some reason, that continues, individual tribes and individual landowners will be faced with no other course but to seek some type of litigation action against their trustee for failure to carry out that responsibility.

One other point before we proceed with the discussion: clearly it seems to us that the Bureau of Indian Affairs and its forestry program in the Department of Interior has no less responsibility to Indian lands than the Forest Service or the Bureau of Land Management has for the responsibility of other Federal lands held in trust for the American people.

And yet we find that the dollars available for the management of Indian lands are 40 percent less than those made available on a per acre basis for the U.S. Forest Service, And, in some cases, only 25 percent of the amount of money that is made available for the management of lands under the Bureau of Land Management.

Gentlemen, that discrepancy leads us to the conclusion that changes must be made if the trust responsibility of this country is to be fulfilled to the people and to the Indian tribes and to the resources that they own and have and that are held in trust by this government.

Thank you, Mr. Mickum.

[Prepared statement of Mr. Sampsel appears in appendix.]

STATEMENT OF FRED MATT, PRESIDENT, INTERTRIBAL TIMBER COUNCIL, PABLO, MT

Mr. MATT. Mr. Chairman and members of this committee, my name is Fred Matt. I am the president of the Intertribal Timber Council.

I have provided you with a more-detailed copy of my testimony, and at this time I would like to try to hit some of the high points.

I thank you for this opportunity to address some concerns that we have in the area of forestry management.

ITC was formed in 1979, and we represent 59 Indian tribes—roughly 90 percent of 5.6 million acres of timber lands held in trust by the Bureau of Indian Affairs.

In the mid 1970s, tribes became concerned about poor management, or possibly lack of management, by our trustee. I guess at that point one option that we did have was litigation, but we decided not to fight the BIA but to try to work with them and to possibly resolve some of these concerns and issues.

Once again, today the forestry program is straining once more. Funding, staffing deficiencies, increasing costs, added environmental and archaeological requirements are all becoming real problems to us. Expanding timbered forest lands—again, no dollars for staffing. Last year, alone, 52,000 acres was added to the base, and nine million acres of woodlands were added to BIA's forestry responsibilities. Most of this was in the Southwest.

Again, there is no funding or staffing here to manage these lands.

Also, there is an economic benefit to tribes of roughly $39 million.

In 1978, Congress added 262 positions to forestry. Today, 124, or roughly one-half, of those positions are unfunded and empty.

BIA's own funding and staffing needs study shows that for state-of-the-art management they need roughly $26 million and 507 additional positions, which will be displayed by some charts later in the program.

To look closer at these problems and get a second opinion, ITC is requesting an independent analysis. If correct—and we sense they are—forestry is heading towards a crisis once more.

Mr. Chairman and member of this committee and others in Congress, I think you can help this crisis by providing the necessary funds and resources so that we can meet our needs.

Thank you.

[Prepared statement of Mr. Matt appears in appendix.]

Mr. MICKUM. Thank you, Mr. Matt.

You indicated why the Timber Council was formed. Let me ask you: does the Intertribal Timber Council have a technical arm, or does it rely on the Bureau for its technical expertise?

Mr. MATT. No, we don't have a technical arm. We do rely on the Bureau of Indian Affairs and, in some cases, tribes with technical forestry staff. We use those people.

Mr. MICKUM. What problems does that create for the Intertribal Timber Council?

Mr. MATT. Well, we have no independent source available to verify BIA's figures.

Mr. MICKUM. You've indicated your belief that the BIA is understaffed and underfunded. Do you believe they have adequate staffing and funding to manage Indian lands pursuant to its trust responsibility?

Mr. MATT. No, I don't. I think other witnesses will testify as to specific problem areas here today.

Mr. MICKUM. What is the minimum level that is required in order to meet its trust obligations?

Mr. MATT. Funding for the management of Indian lands is completely deficient. At the very least, as was mentioned earlier, tribal forest management deserves at least the same funding as is made available for other Federal Agencies. The Forest Service and the Bureau of Land Management get as much as 400 percent more per acre than we do. I'm not aware that the government has a trust responsibility to those agencies, so, quite frankly, we are a bit confused as to why we don't receive as much.

Mr. MICKUM. What do the tribes contribute to the forestry program?

Mr. **Matt**. If tribes have forestry staff and expertise available, they make them available for timber sales. Also, tribes kick in approximately $15 million annually, which is about 30 to 40 percent of the total forestry budget.

Mr. **Mickum**. Is the Bureau providing state-of-the-art management for Indian lands?

Mr. **Matt**. I guess I will have to say no. I have been in the Intertribal Timber Council for a number of years and have had the opportunity to discuss this very issue with many tribal people. The overwhelming consensus is that the BIA is not providing state-of-the-art management. But I will say that, while there are many in the BIA who are doing a good job, unfortunately there are many glaring deficiencies.

Mr. **Mickum**. Mr. Sampsel alluded to the fact that tribes were not achieving the maximum allowable harvest. You are presently the vice chairman of the Confederated Tribes of the Salish and Kootenai. Are you able to harvest your maximum allowable cut?

Mr. **Matt**. Presently the timber market is probably the highest ever in western Montana, and the northwest, in general. No, we have not been able to maximize our annual allowable cut. BIA again has provided figures that state that the tribes last year lost $29 million for not being able to maximize our annual allowable cuts.

Mr. **Mickum**. What is the future role for the ITC, Mr. Matt?

Mr. **Matt**. Again, as I stated earlier, I think we would like to continue to cooperate with the Bureau of Indian Affairs. ITC hopes to continue to bring tribes and the BIA together to arrive at a common agenda to correct existing deficiencies.

While we continue to work together with the BIA, serious problems must be addressed and corrected. I expect we will discuss some of these problems today.

Also, we are working on Vision 2000 for the future of ITC. When that document becomes available, I will give you a copy for this committee to review.

Mr. **Mickum**. Thank you very much.

Mr. **Matt**. Thank you.

Mr. **Mickum**. Mr. Gill, do you have a statement you'd like to make?

Mr. **Gill**. Yes, I do. Thank you.

STATEMENT OF DEXTER GILL, DIRECTOR, NAVAJO FORESTRY DEPARTMENT, WINDOW ROCK, AZ

Mr. **Gill**. The Navajos are pleased to be here to express our concern over the continued under-management of our 523,000 acres of timber lands, which generates over $87 million of economic output.

In 1986, we did have a mismanagement claim settlement for over $32 million for forestry and lands, minerals claims. Yet we see no change since, as the level of management provided for by the BIA has actually decreased, and the timber sales are constantly being delayed due to inadequate road building, archaeological and environmental clearances.

In addition, we have over four million acres of pinyon and juniper woodlands, being a type of species that are not commercially sold as lumber.

If you take our total woodlands and our forest, we have a woodland and forest area comparable to the size of the State of New Jersey in total, yet we receive no management, even though it is capable of generating a potential of $40 million of economic output, $11 million possible in direct revenues.

We are simply dismayed that only 11 percent of our total forest and woodlands are under a minimum level of management.

Thank you.

[Prepared statement of Mr. Gill appears in appendix.]

Mr. MICKUM. I put the same question to Mr. Matt: what is the minimum level that is acceptable in order for the Bureau to meet its trust responsibilities in your estimation?

Mr. GILL. I don't think I can put a dollar value at this point in time. The main thing that we need to know is that the level of management must be current, state-of-the-art management on all resources. We can't isolate just timber, which there is a tendency to do. We have to provide efficient timber management, forest management for economic development, and to protect our environment while we're doing it.

Mr. MICKUM. You mentioned state-of-the-art again. Do you believe that the Bureau is providing state-of-the-art management?

Mr. GILL. No. Unfortunately, I'd have to say they are not. In the tribal entity that I am a part of, we have had to take the lead in providing and updating technology to be able to manage our forests.

Mr. MICKUM. In your statement you indicated that the Navajos have over four million acres in woodlands. Do you receive any funding at all for the management of those lands?

Mr. GILL. Well, Mr. Mickum, we have received virtually no funding or personnel assistance in any form to manage the woodland types.

Mr. MICKUM. With regard to Navajo resources, is it your opinion that the funding for resources other than woodlands is not acceptable, as well?

Mr. GILL. That would be correct. Other than woodlands, our timber type, which is our commercial timber—commercial timber generates about $87 million worth of output. That is gross, economic output.

Currently, our timber sales are constantly delayed due to a variety of factors. Many of them are having to do archaeological clearances and having to do environmental clearances. The timber sale packages, at one point, was even reaching the point where our saw mill was within a week of having to shut down operations because our timber sale package was not prepared and ready.

Mr. MICKUM. What funding reductions have been experienced by the Navajo Nation with regard to its forest management?

Mr. GILL. We see funding reductions in three different areas. I'd like to identify those for you. We're looking at a period of time now from 1985 through the current year, 1989. In that period, we have experienced what we call "direct," or cash dollars available for programming in the forest management aspect. In that area, we have seen a 16 percent reduction since 1985 in actual dollars.

The second area of reduction that we see is the failure to keep up with inflation costs. There has been a dollar reduction in that. There has been inflation going on during this period of time. In that realm, we see 28.7 percent reduction since 1985.

The third area that we see a cost factor that reduces our effectiveness is in the area of additional directives, such as having to comply with the archaeological clearances and environmental clearances. When we include these together, we are looking at a 68 percent reduction in funding to enable us to do a 1985 job.

Mr. MICKUM. If we can return just briefly to the issue of woodlands, how long has BIA recognized its need to manage your woodlands?

Mr. GILL. I guess you could say apparently since about 1987. At that time, the BIA was requested by the Pueblos in the Southwest to look into the problem. They put together a task force which conducted an overview of the entire Nation's woodlands from the southeast clear through the north, and they came up with about eight million acres needing management in some form on Indian lands.

Mr. MICKUM. Has the Navajo Nation begun to assume authority over its own forests and woodlands as a result?

Mr. GILL. Yes. We have had to. We have hired two personnel, which are being paid out of our stumpage return monies. With these two personnel—one is a forester and one is a technician—We were able to set up a system for inventories, and we are currently inventoring three of our tribal ranches to set up cutting systems to meet the local needs.

We have established a cooperative planning effort with Northern Arizona University to set up a computer model for decision making in the pinyon juniper types. And we have been very active in working with the U.S. Forest Service and the BLM and other agencies relating to pinyon juniper management in the Southwest.

Mr. MICKUM. We can change subjects now. Your written statement indicates that the Navajo Tribe spent approximately $170,000 a year to comply with environmental and archaeological legislation in its efforts to clear timber sales. Why has this legislation caused so many problems for the tribe?

Mr. GILL. First let me say that we're not opposed to these legislations. We are very, very concerned with our local environment and the cultural needs.

As far as the forest program is concerned, the reason it has caused such a problem is because, first, there has been no funding and personnel to conduct the necessary surveys and clearances that must go to comply with these laws. Additionally, on the Navajo we have—in each timber sale you are talking about approximately 300 identified sites of archaeology within each specific timber sale. In each one of those sites you're talking about one acre each.

Due to the timing, we're looking at having to throw out 300 acres of timber out of each timber sale each year. This has an impact of approximately $2 million of economic output lost, simply due to the processing method here.

Additionally, we see that the State historic preservation officers are in control of the processing and the procedures that must be followed. There is confusion in the BIA system over what procedures are adequate to mitigate any archaeological needs.

We find that, as BIA staff changes—that staff being like an area archaeologist—as they change, the procedures change and the requirements change. So we are constantly working under different requirements for clearances.

Mr. MICKUM. In 1989, you were requested by the BIA to perform archaeological surveys which the BIA is responsible to conduct; is that correct?

Mr. GILL. That's correct. They had inadequate funding in this current year to conduct the necessary surveys to prepare the sale. The result would be no timber sale and shut down our mill.

We were able to put together enough money to hire four archaeological technicians, which we assigned to the BIA to work for them for 11 weeks. The need is for about 20 weeks for 12 men. So only about 18 percent of the job is currently being funded.

Mr. MICKUM. Is it required that these archaeological surveys be performed prior to the timber sale?

Mr. GILL. That's correct. If we are to comply with the law, there has to be a survey conducted, the clearances made and signed off for all the mitigation measures prior to any logging activity taking place.

Mr. MICKUM. In your statement you suggest that a suspension of part of the regulations administered by the Advisory Council for Historical Preservation is necessary. Has the Navajo Nation pursued this option?

Mr. GILL. Yes, we have. The Navajo Nation has established its own historic preservation office—very well qualified persons are in that position. They have requested the National Advisory Council for authority to operate as a historic preservation office under the Federal guidelines and under the regulations. CFR, part 800.1, specifies that the tribes can assume this authority the same as a State historic preservation officer. But that authority can be assumed only by concurrence of the State historic preservation officer.

We have requested the Advisory Council to issue that authority, the States—in our particular case, we are involved in three different States, and all three States must concur that this authority should be given to the tribes, and they have refused to do so, and the Advisory Council has taken no further action on it.

Mr. MICKUM. You heard Mr. Matt's suggestion that an independent assessment of BIA be performed. Do you agree with that suggestion?

Mr. GILL. Yes, sir, I do. An independent review of the BIA and the forest management needs on Indian lands does need to be made. I believe that if we had a qualified agency to do this—a third party—it prevents either the BIA or the tribes being accused of feathering their own nest. I think we need an assessment that needs to be done to show the need; not either one of us trying to feather nests.

Mr. MICKUM. Thank you very much.

Doctor Trosper, do you have a statement?

Mr. **Trosper**. Yes, I do. Thank you.

STATEMENT OF RON TROSPER, TRIBAL ECONOMIST, PABLO, MT

Mr. **Trosper**. My name is Ron Trosper. I am the tribal economist with the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation in Montana.

Thank you for the invitation to testify here today.

My interest is in integrated resource planning and management.

My written testimony presents the view of the Salish and Kootenai Tribes on integrated resource management inventories, marketing, and the BIA staff study.

Indians are moving rapidly to manage their forests, themselves, and tribes will need skilled resource managers. To help that happen, I am changing jobs this summer. I will move to the school of Forestry at Northern Arizona University, where I will direct a new cooperative program which has three objectives: To educate Indians at undergraduate and graduate levels, to tailor the school's multi-resource decision support system to each forest of each cooperating tribe, and to carry out research needed by each tribe.

We plan to start small and to take direction from each cooperating tribe. We will begin with the Navajo forest. I am pleased to follow Dexter Gill, because he and his staff have used both the old style intuitive management and the new, state-of-the-art computer aided systems used at the School of Forestry to plan management a part of their forest. State-of-the-art proved to be superior.

The tribe and the school plan to apply those methods to forest-wide planning of the Navajo forest.

I am ready for your questions.

[Prepared statement of Mr. Trosper appears in appendix.]

Mr. **Mickum**. Thank you, Doctor.

What is integrated resource management, and why is it so important?

Mr. **Trosper**. Integrated resource management means that key decisions, such as cuts of the forest, are made taking into account not just wood fiber, but wildlife concerns, food concerns, recreation, forage for sheep and cattle, water, spiritual and cultural concerns. These have to be brought in as part of the decision-making process, because they are part of the goals of the owners of the land.

Particularly it is important that geographic connections among the various resources and the forest be made during the planning process.

Mr. **Mickum**. How far does this government's trust responsibility obligate the Federal Government to assist and/or manage Indian forest lands?

Mr. **Trosper**. I think an operational answer to that question is: let's look at what the U.S. Government does on its own lands.

It happens that the Forest Service is doing plans for their forests. I brought with me today a copy of the LoLo National Forest Plan. These three books here—a record of decision, the plan itself, and the environmental impact statements. That is the plan of the National Forest.

This is the plan for the Flathead Indian Reservation. It is much smaller. It is much less complete. It doesn't have the inventory data behind it that the U.S. Forest Service has.

I want you to look at this map. If you get close to that map, you can see that there—I want to come up there and show you some of the points.

Notice that the Flathead Indian Reservation is on the eastern side here, and on the western side, in the lodgepole pine types and the high mountain types, specific portions of the forest are indicated for specific types of management. There is a section there that is for highland summer elk, there is a section for timber, and so forth.

Senator **DeConcini**. Excuse me, Doctor. Is the white area the forest?

Mr. **Trosper**. Yes.

Senator **DeConcini**. And the tan area is the reservation?

Mr. **Trosper**. Yes. Except within the forest, it is——

Senator **DeConcini**. There is some checkerboard?

Mr. **Trosper**. Yes. But the tan is the reservation. From where you are seated, you probably can't see the fact that the forest is divided into small compartments.

Mr. **DeConcini**. I see it.

Mr. **Trosper**. And you can see the relationship of the highland country for summer elk range, the middle range for timber production, low country for elk. There are 28 different types.

In making their plan, they are able to relate timber to other resources. They know where the timber is in connection with the winter and summer ranges of the elk. They know where it is with respect to the scenic views.

When the Bureau of Indian Affairs does its inventories, they can tell you how much timber there is on average in the reservation, but if you decide to take particular parts and put it to particular use, they are not set up to deal with that consequence.

Mr. **Mickum**. Is that because they have not done the integrated resource management?

Mr. **Trosper**. And they don't have the data. They haven't collected the data.

Mr. **Mickum**. They don't have the capacity to do it?

Mr. **Trosper**. Right. It takes a considerable effort to get the data together.

Mr. **Mickum**. Thank you, Doctor.

Doctor, at the present time, is resource management being directed by tribal goals and initiatives?

Mr. **Trosper**. It is a mixed situation. We want to do a land use plan for the reservation. We applied to the Administration for Native Americans for $715,000, and we received a grant for $200,000. The Bureau is putting some money into a geographical information system to computerize the current data—what limited data there is available—to at least put it into a map form. That is being paid 50/50. The tribe is bearing half the cost, and the government is bearing half the cost. And these are very limited efforts, and the tribe is directing them because the tribe is coming up with most of the money.

Mr. **Mickum**. Has the Bureau been able to respond to tribal initiatives at all?

Mr. **Trosper**. They want to, but they don't really have the staff to do that. For instance, we did have an initiative in lodgepole pine and moving into production on the value-added end of lodgepole pine, and the Bureau did move resources to lodgepole, but they had to take it away from other places.

We use interdisciplinary review teams but, again, these people are taken off of other work in order to review particular sales.

I'm told that the Bureau has only two forest planners bureauwide, which indicates the truth of what I am saying. Forest planners—you need more than that. You need people skilled in many different skills.

Mr. **Mickum**. Obviously forest inventory and planning is important, then?

Mr. **Trosper**. Yes. I have, in response to the Senator's question, indicated that one needs inventory data that relates the timber that is standing to the other resources.

I took a visit to the Plains Ranger District, which is on that map. The managers at the Plains Ranger District have on-line information. They have maps with overlays that can tell them, for each part of the forest, what is growing there and what the plans are there so that if questions come up they can be addressed immediately.

Our foresters are not in that position. They do not have their inventory information organized as the Forest Service does.

Mr. **Mickum**. Doctor, what does the term "continuous forest inventory" mean?

Mr. **Trosper**. For the BIA that means having a set of permanent plots that you resurvey once every ten years in order to show how the forest is growing. It is continuous in the sense that there are permanent plots that show you how the forest is growing.

The Forest Service has continuous inventory in the sense that every year they are taking data and doing inventories on some part of their forest, and that is a different sense, I think, of continuous. I would call the Bureau's system permanent but discontinuous.

Mr. **Mickum**. Does their forest inventory relate to other resources?

Mr. **Trosper**. I don't believe that it does. No.

Mr. **Mickum**. What types of additional information is needed and should be included in a high-intensity forest inventory?

Mr. **Trosper**. I'd like to see, as I said, information on wildlife, soils—it is very important to know the productivity of sites rather than just what is on the site—recreation concerns, wood fiber products other than saw timber. Those are examples of the kinds of things—a lot more detail than we now have.

Mr. **Mickum**. What is meant by the term "annual allowable cut"?

Mr. **Trosper**. Well, the allowable cut is the maximum cut that can occur in a particular year, so the Bureau calculates a target level or a maximum amount that could be cut in a given year.

Mr. **Mickum**. The Bureau utilizes or determines the annual allowable cuts every ten years using the Austrian formula and the area check method. Do you have any problems with the means of determining the annual allowable cuts?

Mr. **Trosper**. The Austrian formula and the other one that you mentioned are very rudimentary—paper and pencil planning. The Austrian formula uses only the following variables: the total number of commercial acres, the current amount of lumber or of wood fiber per acre, the target amount of wood fiber per acre, the growth rate of the trees, and a conversion period. The conversion period is the time in which you take the standing stock down to a lower standing stock so that you can increase the growth rate. That is it. You can calculate it by hand. You hardly even need a hand calculator to come up with the answer.

We are in the computer age now. The Forest Service has a very sophisticated computer system. Other companies have sophisticated systems. I think that a single formula which is based only on saw timber is not good.

What the allowable cut in the Bureau does is focus up on an amount of timber to harvest in a year. What modern management does is schedule the harvest. Harvest scheduling is the main question, not figuring out what the maximum could be. You actually look at the decisions that are going to be made in cutting.

So in the area of wood fiber, we have to look at harvest scheduling and we have to bring in more variables and more details for the forest.

A second problem—and I've just scratched the surface of some of the concerns that have to be brought in when you look at wood fiber.

Another problem with these formulas is that they do not relate other resources to wood fiber, so you are not looking at range or recreation or water at the same time as you are planning for the wood fiber.

Mr. **Mickum**. Are agency budgets based on annual allowable cuts? If so, what problems does this create?

Mr. **Trosper**. I believe they are based on annual allowable cuts. In some cases, they are actually based on actual cuts, so if you don't cut your annual allowable cut you see your funds slide. I think that is a problem because a forest is producing many products, and if you tie your budget to one product, that doesn't recognize the work that has to be done.

A second problem with that is that housing markets and timber prices are very volatile. They go up and down. We have a cyclical industry, and the cut should respond to that cycle. It doesn't make sense to cut trees when the price is low; it makes sense to cut trees when the price is high.

If you tie your budget to something that has a cycle in it and, in addition, the Federal Government is sort of slow in responding, then you get your resources out of whack with your work effort.

Mr. **Mickum**. Your answers raise the issue of marketing strategies, and I'd like to talk about that for just a second, if we could. Is the Bureau able to respond quickly to market conditions? What problems are there in that regard?

Mr. **Trosper**. They aren't able to respond quickly to changes in positions because it is in the nature of bureaucracy to act with lots of review and consensus building, and that takes time. It is also hard to prepare things ahead of when they are needed.

Dexter Gill mentioned some of the problems that they are having with archaeological issues. If the staff is low, just going through the required steps of a sale on the reservation can take time. And if you are in the situation where we are in now where we have come off a period of low harvest and we are moving into a period of high harvest, we have to deal with the Bureau's time periods for hiring new people and filling positions that are vacant.

Mr. **Mickum**. So the current climate of the timber market is very high. The tribes are being held back from getting their timber to sale?

Mr. **Trosper**. Yes. And I think the Senators will hear this point again and again. My tribe and other tribes are asking for increased staff in order to deal with increased sales volume.

Now, I have to point out that I object to this general way of running a forestry budget. It is very short-run thinking to reduce staff when there aren't sales and then use sales to increase staff as we're going to do now, when what we really have is a level of management that needs to be higher, and the activity of the managers should move into timber sales when prices are high and should focus on other items when prices are low.

The logic of the budget process and the logic of looking at what is going on today only gives us short-run thinking in the Federal Government and in tribes, sometimes.

Mr. **Mickum**. Is it the responsibility of the Bureau or of the tribes to take the lead in this area?

Mr. **Trosper**. I would advocate that tribes take the lead in marketing for three reasons. The first is that it is the tribes' products that are being sold, so they have the idea as to what the value of those products are. The second is that reservations vary in the products that they produce and in the attitudes about those products of the Indians on the reservation, so we have a lot of diversity. The third reason is that any bureaucracy works best if you have simple bureauwide policy, so a good idea, or a reservation that has a success, that success is probably going to be applied to other reservations without looking at the differences.

We have a facility that is open for other tribes to come visit, and it is important that they come to see our facility because we are using a timber species, lodgepole pine, which has some unique characteristics, and you need to know that. If you are going to make a decision and try to follow our example, you need a resource like lodgepole. You can come in and see what we are doing.

Mr. **Mickum**. To what extent are the tribal councils actually in control as far as management at this time?

Mr. **Trosper**. I think it varies by tribe, and I'd like to show you what has happened on the Flathead Indian Reservation.

We had the rental for a hydroelectric site increase from $2.6 million to about $10 million a year right now. That increased income gave us a source of income separate from our forest. When that agreement was reached, the tribal council began to be much more insistent on multiple resource concerns for harvests. They became much more willing to postpone harvests if the prices were not high. They simply had more flexibility.

Before this occurred, the tribe's budget was tied to the size of our timber cut, and so if we wanted to change things we had to contend with the fact that our income would change. Even now in the management of timber tribal funds are tied to the cut through the administrative deduction.

I think an independent secure source of funding, such as we got from our hydroelectric site, helps the tribal council to take a long-run view when it looks at its tribal forest rather than a short-run view. And I want to point out that the Navajos are taking the lead in forest management, and they do have income that is other than forests that they can draw from.

Mr. **Mickum.** I just have one last question, Doctor. You, too, have heard Mr. Matt's suggestion that an independent assessment of the BIA be performed. Do you agree with that proposal?

Mr. **Trosper.** I do personally, and the Confederated Salish and Kootenai Tribes also want to see the independent review.

Mr. **Mickum.** Thank you very much.

Doctor Morishima, do you have a statement?

Mr. **Morishima.** Yes, I do. Thank you, Mr. Mickum.

STATEMENT OF GARY MORISHIMA, EXECUTIVE BOARD MEMBER, INTERTRIBAL TIMBER COUNCIL, MERCER ISLAND, WA

Mr. **Morishima.** I would like to make five general comments as an initial statement.

First of all, the Bureau of Indian Affairs is not fulfilling its trust responsibility for the management of Indian forests.

Second, the Bureau's own internal assessment of its needs indicates serious deficiencies and an inability to provide state-of-the-art management for Indian forests. The table that is on the exhibit that is being placed before you now indicates that the Bureau's assessment shows that they need 507 additional personnel and over $26 million in additional appropriations.

The third point I'd like to make is that the serious deficiencies in the Bureau's forestry program are depriving the Indian beneficiaries of the trust of millions of dollars in current and prospective income from their forest resources.

The failure to adequately invest in Indian forest resources will result in a perpetuation of dependency and a frustration of political and economic self-determination.

The last point I'd like to make is that I, too, believe that there is a necessity for an independent assessment of the Indian forestry program.

[Prepared statement of Mr. Morishima appears in appendix.]

Senator **McCain.** Let me interrupt for one question.

I think you and the previous witnesses have made it abundantly clear as to what the Federal responsibility is here, and I'm not in disagreement with that. What you haven't made clear is what the tribal responsibility is.

Mr. **Morishima.** The tribes also have a responsibility to participate in the management of their forest resources, to set the direction, to set the objectives that they wish to have the management of their forest and other resources meet.

Senator **McCain.** Does that mean funding?

Mr. Morishima. The tribes do presently participate in funding and——

Senator McCain. I wasn't asking what they're doing; I was asking what their obligation is. Does that mean they should participate in funding for road maintenance, forest archaeology, Indian enterprise development? Should they be contributing funding and personnel for those areas?

Mr. Morishima. My personal opinion, Senator, is that it is a federal trust obligation of the United States to the tribal governments, and that the United States should be providing adequate resources to Indian tribes to ensure that the management practices on their forests and other resources meet state-of-the-art requirements.

Senator McCain. What you did was answer to me what the Federal responsibility was, which I said initially I agreed with and was made abundantly clear. I'm asking you to what extent is the tribal responsibility. My question was: are they responsible for some of the funding and personnel requirements that we are obviously 507 people short and $26 million short? Is there any responsibility on the tribes' part to provide some of those areas in which we are now short?

Mr. Morishima. As I indicated to you before, Senator, the tribes are presently——

Senator McCain. I'm not asking you whether they are or not, sir; I'm asking whether they have an obligation to. If you say "I don't choose to answer the question," please don't answer the question. You're not being coerced here.

Mr. Morishima. I don't believe that the tribes have an obligation to do that.

Senator McCain. Thank you.

Mr. Mickum. Thank you, Doctor.

I've asked this question before—let me ask you: what is the minimum level that is required in order for the BIA to meets its responsibilities—trust obligations?

Mr. Morishima. Simply speaking, no less than the best. In my opinion, the tribes are entitled to and should receive state-of-the-art management of their resources. I don't believe that they should accept any less than that.

Mr. Mickum. And is the BIA providing state-of-the-art management?

Mr. Morishima. No, they are not.

Mr. Mickum. What are the consequences? You alluded a bit in your statement to some of the drawbacks for the failure to provide it. What are some more in-depth discussions?

Mr. Morishima. There are many consequences of failing to provide state-of-the-art management of Indian forests. First of all, there would be a continued failure to be able to market and harvest available timber. Secondly, as Mr. Sampsel indicated, I believe that there would be an exposure to claims of liability for mismanagement. Thirdly, there would be reduced yields and potentials for Indian enterprises.

Mr. Mickum. If BIA isn't meeting its responsibilities, why don't the tribes simply file suit?

Mr. Morishima. The tribes have filed suit in the past when it has been necessary to establish principles and a basis for liability.

However, from my perspective, that particular course of action has a number of problems. First of all, it alienates the trustee. Secondly, it tends to consume substantial amounts of funds that could be better used elsewhere. Lastly, when you are in a litigation process, the problems that underlay the cause don't get corrected. There is lost time and continued deterioration of the resource.

Mr. MICKUM. BIA is not providing sufficient funding to provide integrated resource management, is it?

Mr. MORISHIMA. No, it is not.

Mr. MICKUM. What are the consequences for that failure?

Mr. MORISHIMA. First of all, there are potential ecological problems resulting from the failure to consider the interactions with other resources. Secondly, there are likely to be social confrontations between various users of different resources that believe that their interests are not being adequately represented. Third, there would be a reduced flow of benefits that would be achievable from the management of all the resources which comprise the Indian estate.

Mr. MICKUM. Your written statement talks about the imminent retirement of key forestry personnel. What problems does that create, and what viable options are available?

Mr. MORISHIMA. It creates a number of problems, Mr. Mickum. I'd like to present a few background statistics just for your reference here.

First of all, approximately 70 percent of the employees within the Bureau's trust department will be eligible for retirement by 1992. Secondly, some 90 percent of the professional foresters within the U.S. Forest Service will retire within the next decade. Thirdly, the Bureau of Indian Affairs has had a consistently high vacancy rate in its forestry program. Next, enrollment in accredited natural resource and forestry management programs across the country has declined by 50 percent over the last decade. Last, less than one-half of 1 percent of the enrollment in natural resource programs consists of Native Americans.

The basic conclusions are that competition for well-qualified people to manage Indian forest resources will be fierce. There will be a need to rely upon non-Indian professionals, at least in the near to intermediate term.

The key to the tribal programs is going to be in quality and not numbers. The tribes are going to have to find the best people. They're going to have to be able to keep them on board and utilize them effectively. They're going to have to define responsibilities and find new ways of meeting the obligations for management. They're going to have to clarify objectives and set performance standards, establish and maintain systems that demand and reward accountability in the management of their resources.

Mr. MICKUM. Other panel members have indicated their desire that an assessment be done. Why is it so important that this independent assessment be done?

Mr. MORISHIMA. First of all, it is important to provide us with a firm foundation of what the status of management is on Indian lands. The Bureau of Indian Affairs' internal assessment provides an indication of some potential problem areas in its own opinion, but, in my opinion, it is questionable whether or not the individuals that were responsible for providing responses to these surveys had an adequate appreciation of what state-of-the-art forest management practices are elsewhere in private industry and on other Federal lands.

Past studies of GAO have been beneficial in that they have resulted in increased appropriations, but that agency is an arm of the Administration and an arm of the Congress. It has no expertise in forest management.

The independent analysis of on-the-ground management is essential. It has never been done before.

We need to find out what is being done on Indian lands and compare it to what is being done elsewhere. We have to know what our strengths and weaknesses are in order for us to be able to correct deficiencies so that Indian people will be able to gain the benefits that are attainable from their resources.

Mr. MICKUM. How much would such a study cost?

Mr. MORISHIMA. Our current estimate is between $225,000 and $250,000 per year. We believe it will take two years to complete the study.

Mr. MICKUM. The total cost for the assessment is $500,000?

Mr. MORISHIMA. That's correct.

Mr. MICKUM. Let me just jump over to Mr. Cutsforth real quickly. Do you support this proposal that an independent assessment be done?

Mr. CUTSFORTH. Yes, I do, Mr. Mickum.

Mr. MICKUM. Thank you.

Do you have an opinion, Doctor, as to the quality of BIA personnel who provide forestry services?

Mr. MORISHIMA. Yes, I do. Like virtually any large organization, there are some very good people within the Bureau of Indian Affairs and there are those that are not so good. There are few very good, dedicated people in the upper layers of the Bureau, but they are spread very thin and they are very occupied with administrative details.

Below that, there is a void. There are serious deficiencies in middle management, and turn-over levels at entry-level positions within the Bureau are extremely high.

The Bureau is short on specialized skills such as forest engineering, soils, hydrology, marketing, and computer technology. The quality of the Bureau's personnel needs to be improved. Training is badly needed to maintain and to improve proficiency levels.

Mr. MICKUM. You have heard the testimony previously that the Bureau of Land Management receives much higher funding for its land planning than does the Bureau. Do you know whether the BLM has come before Congress to request more money and claim that it is insufficiently funded?

Mr. MORISHIMA. I believe that that has been the case. I don't know what the current appropriation request is for fiscal year 1990. In fiscal year 1989 the Bureau of Land Management had some $3.4 million appropriated for integrated resource management planning to cover some $2.1 million acres of land in western Oregon. They received an additional $9.3 million to do integrated management planning on 1.8 million acres of BLM land outside of western Oregon.

When you contrast that with the fact that there are no funds provided for integrated resource management planning within the Bureau forestry program, I think you can see the deficiencies.

Any integrated planning that occurs within the Bureau's program must occur within existing funding levels.

Mr. MICKUM. What does Congress need to do to alleviate some of the problems?

Mr. MORISHIMA. I believe that there are five major areas where the Congress could be of very great assistance. First of all, to work in cooperation with Indian tribes and the Bureau of Indian Affairs in developing a common agenda to improve the management of Indian forest resources.

Secondly, to provide the means necessary for an in-depth, independent study of the Indian forestry program.

Thirdly, to provide a means of stable, long-term funding for forestry programs. Good forestry decisions require a longer-term perspective than a single year that is currently provided for in the appropriations cycle.

Next, to establish a funding allocation system that recognizes and places tribal forestry programs at least on an equal footing with those of the Bureau of Indian Affairs when it comes to allocation of funds. All too often the tribes are treated as poor distant relations, and their needs get taken care of only after those of the Bureau have been accommodated.

The last area is to reduce or eliminate a number of the road blocks that inhibit the ability to efficiently utilize the resources that are currently available in the management of Indian land.

Mr. MICKUM. Thank you, Doctor.

Mr. Spitz, do you have a statement for the record?

Mr. SPITZ. Yes, I do, Mr. Mickum.

STATEMENT OF JAMES SPITZ, FORESTRY CONSULTANT, WARM SPRING AND YAKIMA TRIBES, BEND, OR

Mr. SPITZ. I'd like to begin by thanking the committee for giving me the opportunity to express my opinions on Indian forestry programs. I'd like to make four major points today. I'm not going to go into any details, because I would be repeating a lot of what has already been said.

First of all, I do believe that there are great potential benefits available from integrated resource management on Indian reservations.

I think two major steps need to be taken to integrate resource management correctly. The first and most important step is that good, sound, integrated resource management plans are essential to provide the goals and the direction of how to integrate management. Second of all, in some cases it would be desirable to re-organize the management structures that are being used by the resource groups so that staffs can communicate better and work more closely together.

A second point that I'd like to make is that a minimum budget is essential to meeting the trust obligations for managing Indian forests. Certainly there are possibilities for working smarter, stretching current budgets and current staffs. But ultimately I believe some additional funding will be necessary to meet the trust obligation.

Third, I think there are some very large opportunities to develop forest products businesses on Indian reservations. By developing these businesses, tribes can go a lot further towards being self sustaining, towards self sufficiency, and less dependency on the Federal budget.

Finally, I would like to wholeheartedly endorse the idea of having an independent review of the Bureau's management of the forest.

Mr. MICKUM. Thank you, Mr. Spitz.

You played a significant role in the preparation of a market study. What opportunities were found for forest products businesses for development on Indian reservations?

Mr. SPITZ. A great many opportunities were found. After completion of the marketing study, the study was carefully reviewed in private with 20 timbered Indian tribes. On average, we found four good viable opportunities for each tribe. A lot of these were the very traditional opportunities that one might think of—sell logs into higher valued markets, manufacture lumber, manufacture plywood, further manufacture of lumber or plywood into doors, windows, furniture, those types of products.

There were also many opportunities that we think of as non-traditional—opportunities to produce pinyon nuts, to harvest decorative floral products, to grow shitakii mushrooms for the oriental market, to form crews to perform forestry services.

There is a hierarchy of business development that is available to tribes in the forest products business. The simplest thing the tribes can do is to just sell their stumpage, or sell trees in a standing product and allow someone else to harvest it. Unfortunately, that returns relatively little value and employment to the tribe.

As a step beyond that, the tribe can do their own logging and sell logs, thereby achieving more employment and more revenue. Beyond that, they can manufacture primary products like lumber and plywood, and they can go beyond that and make furniture.

Currently, only one third of the harvest from Indian reservations is actually carried to the point of making lumber or other primary products. There is a lot of room for progression along this value-added chain.

Mr. MICKUM. Why was it necessary for the tribes to undertake this study?

Mr. SPITZ. The tribes felt that the Bureau of Indian Affairs was not providing adequate assistance in the area of marketing and business development. As a result of the study that was done, the Bureau of Indian Affairs has created their own marketing and business development staff and begun a program to provide that type of assistance.

Mr. MICKUM. How lucrative is the domestic timber market at this time?

Mr. SPITZ. The domestic timber market is currently at an all-time high. On average, the prices being paid for logs are at or above the high levels achieved in the latter 1970s.

Mr. MICKUM. How lucrative is the foreign market?

Mr. **Spitz**. The foreign market is even stronger. It is certainly at all time highs. In some cases, prices of 20 times the domestic price are attainable in the export market.

Mr. **Mickum**. We have had some testimony concerning marketing strategy and practices. Have you had occasion to question BIA's ability to provide such services?

Mr. **Spitz**. Yes, I have. On one occasion, a tribe asked me to determine if they could realize more money from some of the logs that they were harvesting. I checked the export market and compared the values available there to the values they were receiving from delivering those logs to their own saw mill. In this particular case, they were selling the logs to their own saw mill for anywhere from $16 to $40 per thousand board feet.

In the export market, those same logs were worth over $1,000 per thousand board feet. That is a 50-fold increase in the value they were able to receive for those logs.

Mr. **Mickum**. Was the value on the foreign market brought to the attention of the Bureau?

Mr. **Spitz**. Yes, it was. The Bureau analyzed that value, confirmed that it was correct, and then supported the tribe in selling those logs into the higher-value market.

Mr. **Mickum**. Should the Bureau have been aware of the value of that timber in the foreign market?

Mr. **Spitz**. Yes; I believe they should have. It is part of their trust responsibility.

Mr. **Mickum**. With regard to the necessity to respond quickly to market conditions, could you characterize the Bureau's ability to do so?

Mr. **Spitz**. I have had limited experience in this area, but in the few cases when I have gone to the Bureau and pointed out that some substantially higher values were available by working smarter or selling into a new market, I was disappointed in getting responses such as "Well, it will take two years for us to respond to that. We will have to write the environmental documents and do all the other work required, and so 2 years from now maybe we can do it."

Mr. **Mickum**. What specifically is needed to sufficiently develop these other areas for forest products?

Mr. **Spitz**. Well, there are a number of things that can be done here in the immediate future, and they are not that overwhelming. Certainly a lot of the tribes could use some technical assistance and financial assistance to analyze their business possibilities, develop feasibility studies, develop business plans, and, in the case of the tribes that do not have much in the way of resources, they may need some assistance to carry that forward into the actual construction phase on a new business or even the start-up phase.

Also, I think a newsletter would be very helpful. A newsletter could accomplish three major things: One is to keep the tribes up to date in summary fashion on developments in the forest products industry and the market opportunities; second, a newsletter could monitor the markets and interpret what those changes in the markets mean to the tribes; and, finally, I think a newsletter would be very valuable to point out success stories in Indian country so that tribes could realize what other tribes have done right and model their own actions after that.

Mr. MICKUM. Are you aware of any other areas where the Bureau's management practices fail to conform to the state-of-the-art?

Mr. SPITZ. I have seen a number of things that the Bureau has done that are state-of-the-art, and I am very pleased when I have seen that. I have seen some outstanding examples of reforestation, of genetic improvement plans. I believe that the Bureau's manual on how to do integrated resource management planning is a major step forward and as good a planning system as I have seen anywhere. I have heard that the Bureau has developed a new inventory system that better models growth and considers other factors in the forest, and it will be a large help in better computing of the annual harvest and responding to some of the concerns that Mr. Trosper brought up.

Unfortunately, though, the Bureau program, as I have seen it, falls very short of meeting trust responsibility in many areas—actually, in most areas. As a result of the undermanagement that has occurred over the decades, a cumulative type of effect occurs. There just has not been the growth in the forest that there should be. I believe that unless corrective action is taken quickly, a lot of the tribes are heading for disaster within their forestry programs and they are going to have to substantially reduce their annual harvest because growth simply is not occurring because of lack of management.

Mr. MICKUM. With regard to some of the issues we have spoken about today, what problems are due to the quality of BIA personnel?

Mr. SPITZ. The BIA has some very good people. The trouble is that they don't have enough of them. The Bureau is very thin on middle-level managers. A lot of this I think is due to the fact that they cannot offer many of the career opportunities that competing agencies and private organizations are able to offer. The Bureau, I also believe, is handicapped by some of their preference programs. By trying to help minority people and others that do very much need help in the business world, they have essentially discouraged a lot of their professional folks with a lot of experience who sit back and say, "Why should I work hard? I can't get anywhere anyway. I'm not a targeted person."

I would like to say, though, that I have been very pleased that when the Bureau has been told that a tribe has a specific goal, if that goal makes sense the Bureau has been very responsive with their crews, and I believe have seriously done the best they could to respond with the resources they had available.

Mr. MICKUM. Do current Federal laws and regulations adequately allow for multiple use goals?

Mr. SPITZ. I believe that the laws do allow for multiple-use goals. Unfortunately, in all bureaucracies, public and private, people really realize how they are evaluated, and the paperwork is always seen by the supervisors. So I fear that far too many times people emphasize the paperwork, try to impress their supervisor with it, and in the process they take time away from doing the field work and some of the more important things that they really should be doing.

I believe that there is good justification for trying to streamline the bureaucratic processes and relieve those burdens so that people can concentrate on the field work and other more important things that they should be doing.

Mr. MICKUM. Thank you very much, Mr. Spitz.

Mr. Cutsforth, do you have a statement for the record?

Mr. CUTSFORTH. Yes, I do, Mr. Mickum.

MARSHALL CUTSFORTH, CHIEF, DIVISION OF FORESTRY, BUREAU OF INDIAN AFFAIRS, WASHINGTON, DC, ACCOMPANIED BY SAMUEL MILLER, CHIEF, DIVISION OF WATER AND LAND RESOURCES

Mr. CUTSFORTH. Mr. Chairman, I am Marshall Cutsforth, Chief, Division of Forestry, Bureau of Indian Affairs. I am pleased to appear before the committee today and provide testimony regarding the natural resources.

My written testimony briefly traces our Indian forestry program from its beginning in 1910 with a budget of $100,000, to 1989 with a Congressional appropriation of $32.6 million.

It also identifies key legislation requiring the protection and management of Indian forests, and provides both statistics and a description of the forest then and now.

It also acknowledges the significant tribal investments of approximately $15 million annually in the management of their forest resources.

I have also reviewed five major studies of the Indian forestry program undertaken during the past 20 years. These studies identified our recommendations, and we have described what actions the Federal Government has taken in response to those.

These concerns centered around forest development backlogs, forest management inventory and planning deficiencies, economic development, and policy and use of administrative fees.

My testimony also includes the function and role of the Bureau's forestry program and the current status of 11 major program aspects.

Finally, I have described the Division of Forestry's vision of the future to be identical to the goals and objectives that are stated in the Intertribal Timber Council Vision 2000 report.

The Bureau is committed to a joint Indian forest management relationship with the Indian tribes and the Intertribal Timber Council and remains committed to promote, develop, and expand the Indian forest resources, the economic opportunities, and the Indian self-determination in harmony with the goals and the desires of the Indian people.

Thank you.

I'm prepared to take your questions.

[Prepared statements of Mr. Cutsforth and Mr. Miller appear in appendix.]

Mr. MICKUM. Thank you, Mr. Cutsforth.

You have heard the testimony so far today. Do you believe that your current staffing and funding levels are sufficient to provide state-of-the-art management?

Mr. CUTSFORTH. Mr. Mickum, within the constraints of the resources provided to the program, management service is at a high level. If a comparison of the Bureau capability and other resource agencies' capabilities were to be made, I would have to say we would probably be found not to possess equal capability.

The situation of the Bureau today I believe can best be described by a statement that a former assistant director of the U.S. Forest Service, Pacific Northwest Forest Experiment Station, made. In commenting on the Bureau's forestry program he said, "Over the years, the Bureau's foresters have done more with less than any other group of foresters in the United States. They have been doers and innovators, yet responsible managers of the resources entrusted to them."

I would emphasize that this doesn't mean that, given adequate resources, we can't do a better job.

Mr. MICKUM. Why haven't the necessary funds been requested?

Mr. CUTSFORTH. The Divisions have requested funding. In the last budget cycle, 58 initiatives were put forth in the resource areas. Eight of those in the forestry program including inventory and management, woodlands, regular forest development, fire equipment, timber sale administration, natural resource education, and forest products marketing. These initiatives were supported, in some cases, all the way through the Department. But in the budget process, increases were not included in that final budget.

Mr. MICKUM. Is it the Bureau's responsibility to ensure that the maximum allowable cut on a given——

Senator DECONCINI. Excuse me, counsel. Let me ask Mr. Cutsforth a question on that, if I may.

Your budget in this area is $30-some million?

Mr. CUTSFORTH. Yes. It is $32——

Senator DECONCINI. That's for 1989?

Mr. CUTSFORTH. Yes.

Senator DECONCINI. And do you know what the amount was that you requested for 1989 when you submitted your budget to OMB, or whoever it goes to.

Mr. CUTSFORTH. No, I don't recall.

Senator DECONCINI. Was it more than this?

Mr. CUTSFORTH. Yes, sir.

Senator DECONCINI. So some place else above you reduced that amount of money; is that correct?

Mr. CUTSFORTH. Yes.

Senator DECONCINI. And along that same line, have you ever done a cost estimate of what it would take, dollar-wise, if you were going to attempt to do the integrated resource management and some of the other things that have been pointed out here today?

Mr. CUTSFORTH. Yes, sir; the figures that were on that exhibit up there were the result of a survey——

Senator DECONCINI. I'm sorry. I missed that.

Mr. CUTSFORTH [continuing]. That we did from 1987 through 1989 of the——

Senator DECONCINI What you would need?

Mr. CUTSFORTH [continuing]. Agencies and the tribes.

Senator DECONCINI. I saw that one. Okay. Thank you.

Mr. MICKUM. Thank you, Senator.

My last question was: Is it the Bureau's responsibility to ensure that the maximum allowable cut is harvested?

Mr. CUTSFORTH. Yes; I believe it is, in concert with the tribal goals and objectives.

Mr. MICKUM. Is the maximum allowable cut being achieved on most reservations?

Mr. CUTSFORTH. Over the long period, we have not sold the maximum. In 1987, we did sell slightly over the marketable volume for the first time in several years. I must point out, though, that this was accomplished by shifting priorities within the program and at the expense of other parts of the program.

Mr. MICKUM. What are the consequences of failing to harvest the maximum allowable cuts?

Mr. CUTSFORTH. I think, as others have testified, the major consequence is the loss of revenue at the reservation. This becomes extremely important where a tribe is heavily dependent upon the income from the forest to operate the tribal governments and the programs that they provide to their members.

Mr. MICKUM. And, in this regard, the Bureau bears heavy responsibility?

Mr. CUTSFORTH. Yes.

Mr. MICKUM. Let me call your attention to this exhibit. It indicates that since 1978 some 3.3 million acres have been added to Indian trust lands. What effect has the acquisition of these lands had on your ability to provide services?

Mr. CUTSFORTH. The additional land management responsibilities, particularly on newly-created reservations such as Grande Ronde and Alabama-Coushatta and additional land acquisitions by Quinault, Jicarilla, Nez Perce, and others has and will continue to put a significant burden on our limited management resources.

The Office of Trust Budget has remained at relatively the same level for several years with no adjustments for inflation or grade advancement due to ordinary career progression, and additional duties, such as those defined by NEPA and archaeological clearances.

As this shows, it has resulted in a real budget reduction of 23 percent, while the land base we are responsible for has grown by 6 percent.

At current levels, we can provide management on these lands, but it is only at the cost of reducing other parts of the Bureau's programs.

Mr. MICKUM. When did the Bureau assume management of Indian woodlands?

Mr. CUTSFORTH. In 1987 the Assistant Secretary gave the responsibility to the forestry program for planning and management on the commercial woodlands.

Mr. MICKUM. Was the delegation of responsibility to the woodlands accompanied by an increase in either staffing or funding?

Mr. CUTSFORTH. No, sir, it was not.

Mr. MICKUM. Has the Division of Forestry recommended that monies be allocated for woodlands management?

Mr. CUTSFORTH. Yes, we have. That initiative was put forth. It was supported by the Office of Trust, the Bureau, and the Department. However, in the construction of the budget, the initiative was not recommended for funding out of the Office of Management and Budget.

Mr. MICKUM. Do you know why that allocation was deleted?

Mr. CUTSFORTH. There evidently were higher priorities that were established.

Mr. MICKUM. But the Division of Forestry made that recommendation and has pretty much stuck by its guns?

Mr. CUTSFORTH. We certainly have.

Mr. MICKUM. The BIA's own studies indicated that none of the woodlands has ever been intensively managed for production. If intensive management practices were implemented, what benefits do you think would be realized?

Mr. CUTSFORTH. I would point out that the woodland areas are also an area that is heavily used—particularly for range.

The previous management on this area was principally for range. With the change in economics and markets, the woodlands, for their wood products, became quite important.

We believe that the intensive management for the commercial woodlands would be beneficial to the tribes both socially and economically. We, however, lack the basic resource data to really exploit this opportunity.

But I would say that, as an example, for each 20,000 cords of fuel wood that could be produced, this could result in gross revenues to the tribe of $1 million to $2 million, and provide 150 to 200 jobs.

We believe the Indian commercial woodlands are capable of producing far more than 20,000 cords of fuel wood annually.

We believe that the markets for large volumes of fuel wood are available—especially in the Albuquerque, Phoenix, and Los Angeles areas. In addition, tribes could receive significant revenue from the sale of posts, poles, pinyon nuts, and other woodland products.

Additionally, there are many non-wood product uses and benefits deriving from the intensive management of the woodlands, including wildlife range, watershed, and recreation.

In short, we believe that a capital investment in Indian woodlands management will pay substantial dividends to the Indian people and play a key economic role in the development.

Mr. MICKUM. Just so the record will be clear, is the inability of the Bureau to amass the necessary data due to inadequate staffing and funding?

Mr. CUTSFORTH. Well, following the Assistant Secretary's direction in 1987, we did commission a study, and one of the recommendations in that study was that it would take about $3.5 million and 40 people to take advantage of the products there in woodlands. We don't have those people.

Mr. MICKUM. To date, no money has been allocated for woodlands management?

Mr. CUTSFORTH. That's correct.

Mr. MICKUM. Could you talk briefly about what marketing services are being provided to the tribes?

Mr. CUTSFORTH. At the suggestion of the Intertribal Timber Council, about two years ago we did initiate a marketing capability in the Bureau. We presently have four positions in the Bureau—two of them are filled in the field, and one in the central office.

The field locations are in Minneapolis and Portland, Oregon, and we presently are advertising to fill a job in Phoenix.

The appropriation for that, incidentally, was $338,000.

Mr. **Mickum**. So for the entire Bureau at the present time, there are three individuals providing marketing assistance to the tribes?

Mr. **Cutsforth**. Yes.

Mr. **Mickum**. Thank you, Mr. Cutsforth.

Mr. Sampsel, do you have a concluding statement?

Mr. **Sampsel**. Only that, as we have heard today in the testimony that has been presented and the questions that have been responded to, the need is tremendous.

I would urge that this committee and this special investigating staff, in the formulation of your final recommendations and reports as a result of your work, determine how best the Federal Government can meet its responsibility to Indian tribes in this and in other areas.

At a minimum today, all of the experts that are here, and others that are not, have suggested to this committee that we need an independent review of what the Bureau is doing. If their own figures and statistics suggest a 500 FTE shortfall and $26 million of need, and if the figures of not being able to have the proper staffing available for allowable cut have, as a minimum last year, $25 million in lost revenue from that activity only, and if every expert that testified before this group says that integrated management is, in fact, the state-of-the-art, then why can't we achieve that as a government in its trust responsibility to Indian tribes, Indian people, and their lands held in trust for their benefit?

I don't want to get too emotional, but it seems to me that the evidence is overwhelming, and the response, in part, in the past, has been a response to a particular study, what an individual GAO report said, what we have been able, as individuals within government and as tribal governments, to get through the system in order to lay before Congress what the needs really are. And I fear that what you have heard today is but the beginning of a long litany of abuses to the trust that will lead to lengthy litigation if, in fact, this government cannot find the means and the heart and the responsibility to address those needs in a responsible way.

Mr. **Mickum**. Let me ask you, Mr. Sampsel: Senator McCain asked Doctor Morishima whether he felt the tribes were required to make contributions to alleviate the shortfall experienced in BIA. Do you agree with Doctor Morishima's answer that they do not have that obligation?

Mr. **Sampsel**. Yes, I agree with Doctor Morishima, but the fact is that tribes do contribute to the shortfall that is taking place today. They substantially contribute to the responsibility of the Federal Government in the management of those lands.

We would not be asking the same question of the U.S. Forest Service or BLM.

Should the critters on BLM land be required to manage their forest? Should the people of the State of New Mexico and Oklahoma be required to manage that Federal responsibility? The answer is no.

I don't want to get too personal about this, but it seems to me that Indian tribes have, in fact, assumed a great deal of responsibility in terms of defining their needs.

Let me suggest to you that, absent the database that has been talked about today, and absent the information, it is very difficult for individual tribes to reach those agreements.

Everyone at this table today, and all of those that have been participating over the last decade in trying to determine better policies through the Timber Council and others, have dedicated time and energy and resources to help resolve this problem without going into some litigative means.

We do not have an adequate database. We do not have the means by which to make adequate decisions. Tribal governments are sitting there today asking if we can at least have an independent study to determine if the needs forecasted by the trustee are adequate to meet the needs that we now see.

I don't want to say that tribal governments should not have a responsibility in resource management. Of course they do.

I don't want that question, however, to imply that that diminishes the Federal responsibility, and that it does not.

That is where I would like to put the emphasis today—not on what tribes can contribute, not what they do contribute, but is the Federal Government fulfilling its responsibility. Clearly the evidence is that it is not.

Mr. MICKUM. The Fish and Wildlife Program contracts out most of its services. Do you feel that the Division of Forestry should perhaps move in that direction.

Mr. SAMPSEL. Speaking within the Bureau of Indian Affairs, yes. What we have today in the Bureau of Indian Affairs is that most of the dollars made available from Congress for the program goes to specific programs that are in what we call the "unbanded" side.

They do not have a large technical or supporting staff within the Bureau of Indian Affairs in fish and wildlife management. The tribes have taken on that responsibility at the tribal level and have formed their own technical organizations, such as the Intertribal Fish Commission in Puget Sound and the Columbia River Intertribal Fish Commission in the Columbia River that have technical expertise.

That has been very effective. It has been effective in terms of developing the expertise among tribal governments and among their collective organizations, and it has not diminished in any way the trust of the Federal Government of fulfilling their obligation in those resource areas.

Mr. MICKUM. What specific action should the Executive Branch take to enhance the ability of the tribes to utilize their resources?

Mr. SAMPSEL. The answer is too simple. They need to take their responsibility seriously. The Marshall Cutsforths of this system should not have to figure out how to trick the Federal Government into listening to the demand for adequate funding and staffing to provide for the trust responsibility. We should not have to play waltzing and dancing games because we can't get through the administrative process an adequate reflection of need from OMB to lay before the Congress to say let's discuss what is really required.

The programs have to be taken seriously.

So I guess what I'm really saying is that you need to pay attention to what is being asked for and to do it in a way that the Supreme Court has suggested in case after case—do it in a responsible way. Do not diminish that responsibility that is legal between these individual tribal governments and this collective United States.

Can we do it without confrontation? Yes, we can. But we can't do it if a response to a particular need is discovered and then zeroed out.

The earlier testimony before this panel came was not—this is the way Indian programs are dealt with. You've got 89,000 housing units that are needed, and there is no funding in this year's budget, and only 1,200 housing units for last year. Senator Daschle said that was a disgraceful situation. I would suggest to you that it exists throughout the management of Indian programs, and particular in the trust area in the management of trust resources.

Is it a plea to do a specific thing? Yes. Let's get on with the job. Let's find out what we really need, and let's responsibly go after trying to serve it.

There is no Indian tribe that is anxious to sue its trustee. There is no individual who wants to go to court and litigate for ten years so that they can get a fair price for their product. And it should not be the desire of the United States to have that to be the means by which justice and equity are achieved.

Mr. MICKUM. This is my last question, Mr. Sampsel. You indicated a little bit earlier some of the things you thought this committee ought to do with the information it has received to date. Do you have any last suggestion?

Mr. SAMPSEL. Yes, please. Share it with your colleagues. A lot of effort has gone into preparing this information for this committee and with your staff. You've got a full committee. You've got appropriation committees. Help us with the education of this government as to this specific need and as to the total needs across the board, and give the resources necessary to do at least an adequate job.

Two statistics again from the very beginning. It is unforgivable that, at a very minimum, $29 million was denied to Indian tribes and Indian people last year because we couldn't figure out how to cut the timber that is sitting there.

It is almost inconceivable that the Bureau's figure and our estimate is in excess of $400 million over the last two decades. And the trend, as you can see from that chart, is only going to get worse.

We'd like to verify the Bureau's figures. We'd like to have some independent analysis. We'd like state-of-the-art management, which means the best people that we can possibly get. And we're not talking in some—we understand the realities of the budget process and the problems that this country is in in terms of why priorities have to be set. But we're talking about a specific trust responsibility here. We're talking about a priority for funding, and that needs to be recognized.

Once we agree to what that need is, then we must collectively, as Indian people, as experts in this field, assist the Congress of the United States and the Executive Branch of this government in making sure that we do not have to have a special investigating committee to bring to the attention of the government its responsibility to Indian people.

Mr. **Mickum**. Thank you, Mr. Sampsel and panel.

I have no further questions.

Senator **DeConcini**. Mr. Sampsel, surely in the sense of a trust responsibility it is hard to measure or equate the economic resources that you have available, at least as I see it, with the testimony I heard today.

Let me ask you this: If there were enough financial resources for the Division of Forestry in the BIA, could they manage this properly to meet that trust responsibility?

Mr. **Sampsel**. Yes; with the assistance of the affected tribal governments. And I say that because, as we go forward with the advancement of tribal government under self-determination and self-sufficiency and those government-to-government relationships, it is now a cooperative effort.

The Bureau of Indian Affairs cannot do it alone, but in cooperation with the tribes they can. And there are contracting mechanisms which allow that to take place. The new rules that are being considered now in terms of allowing for new flexibility in the contracting and granting of programs under the new 93-638 regulations, self-determination regulations, I think the answer is absolutely yes.

Senator **DeConcini**. Do you find any contradiction or foresee a problem with the trustee, given the scenario that I am about to give you, that has the resources to do what needs to be done.

Given the beneficiary who is now supposed to work with them to achieve this, the beneficiary may have more of a self interest of a short-term economic response, where the Forestry Division may, truly, in the sense of trustee long-term preservation, have more of a long-term look at it, how do you resolve that?

Mr. **Sampsel**. That's the beauty of the system. That is the trustee exercising the prudent judgment that is independent from those pressures that may be laid before it.

The problem that we have now is not that we have an imprudent trustee; we don't have the data or information by which to make prudent decisions. So I do not see the problem. If we have the data and if we have the resource, which is the premise of the question, then there is no question in my mind that the Bureau of Indian Affairs and this government and the Indian people can do the job.

Senator **DeConcini**. The point is, then, so I understand it, because I think I do: if the resources were there and there was little question that the trustee had the capabilities and capacity to do this, and they were working cooperatively with the tribes, and there was a disagreement in that effort, you could not then point the finger to the trustee in saying, "You're not doing the job because you don't have the resources or the capability." You can demonstrate that you do, so your judgment has to be based on all the data and everything you have, and there just has to be a disagreement with the beneficiary.

Mr. **Sampsel**. The answer to the question is yes. Other resource managers were able to do that now. We have a tremendous amount of data that has been developed over the last decade and a half as it relates to fishery resources, and one of the standard provisions that we have today is that we have to make trade-offs and decisions in that process, but we do it on the basis of the best scientific information and knowledge available. That driving force for good, sound, technical data has made a difference in the fisheries. That's why you see them rebuilding. I think the parallel is true with forestry.

Senator DECONCINI. Let me ask you this last question—and it just occurred to me, and I have no predisposition whatsoever. First of all, what is your opinion of the U.S. Forest Service and their management of public forest lands?

Mr. SAMPSEL. It varies. Let me give you a specific answer as it relates to some of the forests that we have been working with. The reason I say that is that they have undergone, over the last few years, an accelerated program by which to develop the type of plans that were presented before you, and those are currently under review.

Those of us in the northwest have been working very hard with the Forest Service to see that those plans do, in fact, deal with the other environmental concerns—particularly those that have an impact on trust resources—Fish and Wildlife, for example.

I would concur with the witness and the testimony that has been put before us today that their planning effort is much better than that which we have at the Bureau.

I would say that in certain areas we still find it to be deficient in reviewing their plans, and they are, by no means, perfect. But they are much better than we have to deal with at the BIA level.

Senator DECONCINI. Following along that line, is there any merit to consider that the U.S. Forest Service take over the management of forest service on Indian land?

Mr. SAMPSEL. No; I think not. I think what we're talking about is—we have a forestry program within the Bureau of Indian Affairs. We have some very unique situations in Indian Affairs. We are not dealing with the same types of problems. We are dealing with tribal governments that make priorities and set determinations within that that need to be dealt with. That is not the same type of constituency that the Forest Service has.

Quite candidly—and I speak only for myself on this point—I would be very nervous at the decade that it would take to educate the Forest Service as to the needs and individuality associated with each reservation and its tribal government, not to mention the individual Indian land owner who has an equal right to the protection of their resources held in trust by the United States.

Senator DECONCINI. Do any of the other panelists care to comment on that?

Mr. CUTSFORTH. Yes, Senator.

In a report preceding GAO's look at the program in 1975, that very thing was rejected by the Congress and the Executive Branch.

Senator DECONCINI. When was that?

Mr. CUTSFORTH. That was a joint Congressional Committee report, I believe, in 1955.

Senator DECONCINI. In 1975?

Mr. SAMPSEL. In 1955, I believe.

Senator DECONCINI. And 1975, GAO did a report and they came to the conclusion that that was not a good thing to do?

Mr. CUTSFORTH. It was rejected.

Senator DECONCINI. In that report?

Mr. CUTSFORTH. Up here. Yes.

Senator DECONCINI. When you say "up here," you mean that GAO said it wasn't a good idea? That was their recommendation?

Mr. CUTSFORTH. I believe that's right. Yes.

Senator DECONCINI. Yes. There wasn't a vote on it or something?

Mr. CUTSFORTH. I don't know. I can furnish that to you.

Senator DECONCINI. Well, I'm not sure 1975 is very relevant.

Mr. SAMPSEL. Only in that they reached the same conclusion——

Senator DECONCINI. Yes.

Mr. SAMPSEL [continuing]. That the resources were being equally managed in a bad way some years ago. I think perhaps the answer to the question, which is a little facetious, but not meant to be, is that if we had the same level of funding as those that are being provided in the U.S. Forest Service of BLM lands, I don't think we'd have to be having this hearing.

Senator DECONCINI. Does anybody else care to comment on that? [No response.]

Senator DECONCINI. Doctor Trosper, we welcome you to Arizona. We're glad you're coming to beautiful Northern Arizona.

I have no further questions.

Senator McCain.

Senator MCCAIN. Mr. Chairman, I just have a comment that may not be very well received, and that is that I believe that clearly there has been a failure on the part of the Federal Government to fulfill its responsibilities. I think that chart amply and graphically demonstrates that.

At the same time, I also have the sentiment that if we are to have true tribal sovereignty and independence, that the tribes do have some responsibility for maintenance of their own assets within their capability.

To say that the Federal Government must do all things for all tribal assets I think is—when the tribe is also gaining revenues from those tribal assets—I think is something that flies in the face of the notion that the tribes are sovereign nations and deal on a government-to-government basis with the Federal Government.

We have run into this time after time after time. What is the responsibility of the Federal Government in light of the unique relationship that we have with Native American tribes? I suggest those responsibilities as far as education, as far as health care, as far as many others, are absolutely clear: they must be provided. They are written in the treaties.

But when we're talking about assets of a tribe such as timber, it seems to me that the tribe should also be committed to the maintenance, the beautification, and the operation of the assets which are obviously the foundation of their tribe and of critical importance to them.

To say that it is all the Federal Government's responsibility and not that of the tribal sovereign government I think is not an accurate depiction of what I feel the tribe's responsibilities are as a sovereign government. Obviously the witnesses here have different views on that, and I'd be glad to hear those different views.

Mr. TROSPER. I'd like to respond to that.

Senator McCAIN. Sure.

Mr. TROSPER. One issue is that the Federal Government is, in some areas, responsible for management of Indian-owned resources, and it has been proved that that management has not been prudent. Indians have received less than they should have for the sale of those resources.

Senator McCAIN. There is no argument on that.

Mr. TROSPER. So why is it, when Indians are receiving less than full value for their resources because of the action of their trustee, that when their trustee is asked to spend more money, all of the sudden you say, "But these resources are generating money and the Indians should take a portion of that and pay for the cost." We're not getting full fair value for it.

Senator McCAIN. What if the assets were correctly managed by the Federal Government and then profits were gotten from those assets?

Mr. TROSPER. That would make your case stronger if it could be established that the total quantity of assets owned by the tribes was fair. We have situations where tribes have lost assets and they haven't been able to get them back. The reason that these people are poor is because of the assets that were taken without full compensation.

If you could show that the compensation was correct and that it was a fair deal, maybe you'd have a better case.

Senator McCAIN. I don't know what you mean by a "better case," my friend. What I'm saying is that if there is a situation, and I believe there are in some midwestern States, where the assets are being managed correctly and the tribes are making profits from those assets, we are all seeking strong tribal economies, then I say that it is logical to say that, therefore, the tribe should take part in management of their own assets.

Mr. TROSPER. How many assets did they have per person compared to their local neighbors?

Senator McCAIN. There are some tribes that do quite well economically, as well as, and in some cases better, than their neighbors. If you are using a comparison—do you mean between them and the inner city in Chicago? You're getting into a bit of a devious argument here. I'm talking about them doing well economically. If you want to compare them to the inner city of Chicago or Washington, DC, they're doing very well; if you want to compare them to the suburbs of Minneapolis, they're probably not doing so well.

Mr. TROSPER. My strategy in question here is that I want to get the argument to the point where when you make your statement about looking at the current assets, I want to bring up the historical matters. I want to bring up some of the things about how we got to the current situation which are relevant to the Federal Government's responsibility. That's the point that I want to make.

Senator McCAIN. I reject your point, because if we go back and revisit history about our treatment of every American we can find some place where they have been wronged. I would suggest that if you go back in history of our treatment of Native Americans, it is the most deplorable; but if we spend our time trying to redress the problems of history rather than trying to move forward and help Native Americans, help Hispanics, help Black Americans, help Appalachian White, then our efforts, in my view, are much more fruitfully spent recognizing and trying not to repeat the problems and the mistakes and inequities of the past.

Senator DeConcini. Would the Senator yield?

Senator McCain. Yes.

Senator DeConcini. Just to make sure I understand, you're saying that the improper or inadequate compensation when treaties and obligations were first committed to settle what is now Indian lands, that's what you're talking about historically? The fact that if you look at it today, the Indians got a raw deal, and we need to put that into the equation in deciding on how you manage these things today? Is that what you mean?

Mr. Trosper. That's one argument. And the other one, of course, is that even today some of the resources are not receiving their full return.

Senator DeConcini. I have to agree with my colleague from Arizona. That would be nice to go back and rectify those things, but, in reality, we can't appropriate enough money here to put in a procedure that stops sexual abuse in Indian schools, much less $25 million or whatever it would take here to bring this up to date. There just isn't any reality, in my judgment, in your argument, as fair as it may be. We've got to deal with the here and now and what we can do realistically.

I appreciate that intellectual approach, but I don't think it helps us much.

Mr. Trosper. Let me make it in a different way. If Indians with assets start spending money to support the management of the assets, isn't that the same as a tax? Aren't Indians then paying a tax just like other people are? Your Federal programs——

Senator McCain. It seems to me if they're devoting it to the welfare of their own people, they are helping their own people. It seems to me to interpret that as a tax takes a leap in imagination that—I just don't view it as a tax. I view it as a nation helping the people of its nation and helping preserve its assets, just as those of us who live in a community want to do what we can to help our community and devote our energies and efforts to have a wonderful, beautiful community that we can improve and preserve.

Mr. Chairman, if it is appropriate at this time, I'd like to make a very brief statement. I know you had one, but——

Senator DeConcini. I think we're through here with the panel.

Senator McCain. I'd like to thank the witnesses for coming for a long way. Let me repeat: please do not interpret my remarks as in any way condoning what has happened here. I think the major thrust of this hearing—and you have made a strong case—is that something has got to be done. We have got to fulfill these responsibilities. They are not to be taken lightly by me, or the chairman, or the select committee. We will be doing everything we can to see that these responsibilities of the Federal Government are carried out.

The point that I made I think is almost peripheral because the major, overall problem is lack of supervision, lack of assistance, lack of proper management of tribal assets which are the responsibilities of the Federal Government.

I appreciate all of you being here and some of you coming from such a long distance.

Senator DECONCINI. Thank you, Senator McCain. I echo that.

Our discussion, Doctor, even though we may have a little disagreement on tribal participation, I appreciate your position, and I think it is important for us to hear that, and I appreciate all of you taking the time. Many of you have taken some additional time and worked with our staffs here and we may call on you to give us some advice and counsel as we try to pull our whole report together.

Thank you, gentlemen.

Mr. SAMPSEL. Thank you.

Senator DECONCINI. Did you want to make a closing statement?

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, COCHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIANS AFFAIRS

Senator MCCAIN. Just briefly, Mr. Chairman.

As we conclude these hearings, I'd like to briefly comment on our work to date.

Our responsibility has been to inquire into all facets of the Federal/tribal relationship in an effort to identify barriers to Indian opportunity. Unlike the work of many previous commissions and task forces, our responsibility has been to inquire into fraud and misuse of funds and assets intended for Indian people.

We have heard from hundreds of witnesses and received hundreds of thousands of documents. Our inquiry has touched every facet of the Federal/tribal relationship, including: health, education, housing, natural resources, economic development, water rights, child abuse, and tribal government.

I believe our final report, Mr. Chairman, will have recommendations which will do much to assist Indian people to achieve the full measure of opportunities available in our society.

I look forward to working with you on the enactment of new laws and changes in existing laws to ensure that funds and assets intended for the benefit of Indian and Native American peoples are actually used to promote their welfare.

I am aware that some people continue to think that our goal here was to expose corruption. I think clearly an examination of the record of the time and effort devoted by staff and the committee in every measure will indicate that that was, indeed, a small part of the course of these hearings.

I'd like to note that we have had tremendous cooperation from tribal and Federal officials, as well as hundreds of private citizens.

I think it would be well, again and again, to reiterate the outstanding job of the wonderful staff that you have assembled, Mr. Chairman, under the leadership of Ken Ballen, who has done, I think, a superb job.

I also would like to express my thanks to you, Mr. Chairman, for your leadership on this committee. You have spent hundreds of hours preparing yourself in hearings and in meetings, both public and private, in order for us to gain a better understanding of these issues, and I am very appreciative of the many courtesies you have extended me as a member of this committee.

I think that perhaps a few years from now we can look back with some satisfaction at the work of this committee. If we do, that will be, in great measure, due to your outstanding leadership.

Thank you, Mr. Chairman.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DeConcini. Senator McCain, thank you very much for those kind words. And thank you, also, for your tremendous effort here.

We are now coming to the close of our spring hearings of the Special Committee on Investigations. Our hearings have covered a very broad range of issues, all of which will be fully developed in our final report, which will be out in the fall. That report will also cover additional topics that we did not hold hearings on.

The committee and its staff will continue vigorously to pursue the investigation of the Indian Health Service throughout this summer.

Since our hearings on May 15, IHS has sent us tens of thousands of pages of documents, carefully tabulated and organized, and our investigative staff has just begun to systematically go through them. So there has been a change in attitude or approach, and perhaps we will have another hearing, depending on how this develops. But at least we are analyzing it and have the material before us.

IHS has also sent a memo to its employees encouraging their cooperation with our committee, and we will be conducting further interviews and depositions in the coming weeks and months. After we have gathered this information, we will then decide whether or not to have a public hearing.

I'd also like to thank Senator McCain and Senator Daschle and their staffs. This is truly a bipartisan partnership that we have put together, and it has been a pleasant experience from the standpoint of working with colleagues who have different views on different issues and different political parties to see that when a problem as mammoth as this one comes about, it can truly be a Congressional investigation without political overtones.

Our goal was to uncover waste, fraud, abuse, and mismanagement wherever it extended in the Federal/Indian arena, regardless of the political consequences. We instructed our staff to go to the reservations, see the problems first-hand, and speak not only with tribal leaders, but with the whole spectrum of Indian families and individuals.

We engaged in some of the most innovative techniques ever used by a Senate committee, from secretly taping certain people's conversations, like Chairman MacDonald, to covert surveillance of oil fields in Oklahoma with the Koch Company and others. We granted limited immunity to dozens of witnesses, and subpoenaed more than a million pages of documents. Using these techniques, we discovered widespread systematic problems in minority contracting, legal representation, tribal corruption, child abuse, oil theft, mineral royalties under-payments, health services, and water resource management.

I cannot think of an area where the Federal Government has so completely abdicated its responsibility as it has in Indian affairs.

At this point, we have already seen a number of positive results from our hearings. I'd like to bring to your attention just five of them.

First, we have brought the misconduct of a chairman of the largest reservation, the Navajo Reservation, and other tribal officials to the attention of their respective tribes and to the U.S. Department of Justice, who are taking action.

Second, our investigation uncovered about 20 firms that were improperly receiving Indian preference contracts, and many of them are now being sued or debarred by tribal governments, as well as investigated by the Department of Justice.

Third, our hearings have greatly heightened awareness of child sexual abuse in Indian Country. New parent support groups and community awareness programs have recently been formed on a number of reservations.

Fourth, since our hearings on the need to survey the Arkansas River, several companies and individuals in Oklahoma have contacted the Cherokee, the Choctaw, and Chickasaw Tribes and offered to pay royalties.

Fifth, our hearings have highlighted the problems of theft of oil and gas. Tribes and oil producers have recently hired new inspectors to help prevent such theft and have begun litigation to recover compensation for stolen oil. And the Department of Justice is currently conducting a criminal investigation based on the evidence we developed.

The expenses incurred by the Special Committee total about $1.5 million, but the benefits of our work will certainly outweigh that cost.

We discovered that one of the largest purchasers of oil from Indian land has been engaged in a consistent policy of theft totalling more than $30 million in the last three years.

We thoroughly examined how other interpretive issues have allowed oil and gas companies to underpay Indian royalties of at least $35 million in the last decade.

Perhaps of even greater economic significance, our committee found that hundreds of millions of dollars set aside for Indian contractors were, in fact, laying in the pockets of non-Indian businessmen, not to mention a few tribal officials.

But to dwell on the efficiencies of the committee begs the larger question: why weren't these problems discovered and dealt with earlier? And how can the Federal Government spend $3 billion a year on Indian programs with no assurance that the most fundamental standards of accountability are being met?

The Federal agencies entrusted with administering Indian programs have clearly failed in their responsibility. Moreover, they have failed to even recognize their own inadequacy.

Our goal as the Senate Special Committee on Investigations is to break that cycle of failure and to build a stronger base for Indian opportunity in the years ahead. We have already made significant progress in that direction, but much of our work still lies ahead of us. The drafting of the legislative and policy recommendations will be that culmination.

It is that work which we will turn our full attention to in the months ahead.

Thank you.

The committee stands in recess subject to the call of the Chair.

[Whereupon, at 4:55 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT OF MANUEL LUJAN, JR.
SECRETARY OF THE INTERIOR
BEFORE THE SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
JUNE 8, 1989

I am happy to appear before you this morning at your request to talk with you as a part of your continuing investigation into issues involving Federal management of Indian programs.

I have been kept generally informed of the proceedings and was pleased to note that during your opening hearing in January of this year, you indicated that though problems do continue to exist in Indian country, the alleged billions of dollars of mismanagement which the Arizona Republic reported in a series of articles in the fall of 1987 were not found to be substantiated. However, these hearings will be a useful tool in improving program management.

After presenting my short opening statement, I will be available to answer questions which you may have of me.

As you may know, the President and I developed an approach early this year to stewardship which directly addresses Indian tribes and Alaska Native groups. In this stewardship agenda is the following concept:

> Indian Tribes and Alaska Native Groups: Through our commitment to the ideals of Native American self-government and self-determination, we will work with Native Americans to promote economic development, improved educational opportunities, and other measures to enhance their quality of life.

I believe by-and-large that the Department of the Interior, the Bureau of Indian Affairs and all other bureaus within the Department are doing a good job in carrying out the complex programs under their authorities.

However, I am sure that the Department of the Interior can do more.

Your work has identified some areas where coordination of activities among some bureaus may not always be bridged properly. Further definition of responsibilities and coordination can always be improved, as can tightening of selected internal procedures within bureaus. We are analyzing coordination of responsibilities from one bureau to another as related to Indian matters. This analysis will be performed by working level senior staff who are intimately involved in these issues every day. We are not going to commission new studies, with lots of time delays, and the necessity of educating outside consultants.

With the consent of the Senate, I look forward to getting Edd Brown on board in Indian Affairs so that the Department can benefit from his expertise and perspective born of practical field and governmental experience.

Additionally, I was pleased to respond to the recent letter from the Senate Select Committee on Indian Affairs and the Special Committee on Investigations, co-signed by Congressmen Morris K. Udall and John J. Rhodes III, regarding the Department's legal representation of American Indians.

In my letter, I indicated that

- I believe the Department has no responsibility more serious than our trust responsibilities to Indians. I welcome continuing discussions about ways in which we can enhance our procedures for legal representation on these complex Indian issues.

- I am moving in a deliberate and cautious manner in appointing individuals who have substantive legal credentials to critical attorney positions related to fiduciary duties to the Indian trust estate.

I, today, reiterate my sincere concern about the well-being of Native Americans and their interests.

I look forward to receiving your report when it is published. I will now be happy to address questions which you may have for me.

STATEMENT OF
OLIVER B. REVELL
EXECUTIVE ASSISTANT DIRECTOR - INVESTIGATIONS
FEDERAL BUREAU OF INVESTIGATION
BEFORE THE
SPECIAL COMMITTEE ON INVESTIGATIONS
UNITED STATES SENATE
WASHINGTON, D.C.

Mr. Chairman and Members of the Committee:

I am honored and pleased to appear before you to discuss the FBI's law enforcement role on Indian reservations.

I. Jurisdiction/Historical Perspective

The FBI's investigative presence in Indian country can be traced back to 1923 when the forerunner of the FBI, the Bureau of Investigations, was actively investigating crimes committed on Indian reservations. The Major Crimes Act of 1885 granted Federal courts jurisdiction over seven major crimes (murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny), when committed by an Indian against another Indian or other persons. The Major Crimes Act of 1885 ultimately evolved into Title 18, U.S. Code, Section 1153, for which the FBI was given investigative responsibility by the Attorney General.

The majority of FBI investigations in Indian country are based upon Title 18, U.S. Code, Section 1153, which provides for Federal jurisdiction over the following major felony crimes, when committed by an Indian against the person or the property of another Indian or any other person within Indian country:

1. Murder
2. Manslaughter
3. Kidnaping
4. Maiming
5. Felonies under Title 18, U.S. Code, Sections 2241 - 2245 (Sexual Abuse)
6. Incest

7. Assault with Intent to Commit Murder
8. Assault with a Dangerous Weapon
9. Assault Resulting in Serious Bodily Injury
10. Arson
11. Burglary
12. Robbery
13. Felonies under Title 18, U.S. Code, Section 661 (Larceny)

On January 28, 1982, Attorney General William French Smith delegated to the FBI concurrent jurisdiction with the Drug Enforcement Administration for investigations of violations of the Comprehensive Drug Abuse Prevention and Control Act of 1970; consequently, the FBI also investigates drug activity on the reservations.

In 1986, Title 18, U.S. Code, Section 1153, was amended and the FBI acquired jurisdiction over child sexual abuse cases which occur in Indian country.

Exclusive Federal jurisdiction is not exercised on all Indian reservations. In some states, jurisdiction over Indian country has been retroceded to the states and law enforcement responsibilities are exercised by local and state authorities; in certain other states, Federal and state authorities exercise concurrent jurisdiction. A general outline of Federal and state jurisdiction for crimes committed on Indian reservations is as follows:

OFFENDER	VICTIM	JURISDICTION
Non-Indian	Non-Indian	State
Non-Indian	Indian	State or Federal
Indian	Non-Indian	Federal or tribal
Indian	Indian	Federal if a major crime, otherwise Tribal law
Non-Indian	Victimless crime	Usually state
Indian	Victimless crime	Usually tribal law

II. Role of the FBI and the Bureau of Indian Affairs (BIA)

Four law enforcement entities provide the majority of services on Indian reservations: FBI, BIA, tribal police, and state police. In some areas, the county sheriff will provide emergency assistance until the arrival of other authorities. The state police play a nominal role in law enforcement on most reservations. Except in states which have acquired jurisdiction pursuant to Public Law 83-280, state jurisdiction is limited to reservation crimes where both the offender and victim are non-Indian. Some tribes have arrangements with state police to patrol state highways crossing the reservations.

The FBI does not "police" Indian reservations. Except in unusual situations, the FBI role is to investigate violations of Federal law, primarily, the major felony crimes listed in Title 18, U.S. Code, Section 1153. Either the BIA or tribal police have the responsibility for day-to-day law enforcement on the reservations.

Many reservations, especially the larger ones, maintain tribal police forces under the direction of a police chief appointed by tribal government. Other tribes rely on the BIA for basic police services.

Although the FBI continues to investigate the majority of the more serious crimes committed on Indian reservations, efforts have been made to reduce the FBI's investigative role on the reservations.

In October, 1975, the Department of Justice Indian Task Force released a report on law enforcement on Indian reservations which recommended that the FBI (1) limit its investigative activities on Indian reservations to those investigations requested by the BIA or the U.S. Attorney and to those cases requiring FBI expertise or cross-jurisdictional capability; (2) assist BIA special officers in assuming responsibility for presentment of cases to U.S. Attorneys; and (3) increase specialized training capability in reservation investigations and Indian law for FBI Agents assigned to reservation areas and for BIA and tribal police training programs.

The Department of Justice subsequently adopted a policy of encouraging U.S. Attorneys to take advantage of investigations by Indian police, thereby conserving FBI resources and encouraging local pride and self-reliance. This policy was further articulated in the U.S. Attorneys' Manual.

In the 1982 Department of Justice Authorization Act, Congress recommended a gradual shifting of law enforcement responsibility to the BIA and the tribal police, with the FBI providing back-up support when requested to do so. Congress believed that "such a policy would enable local problems to be dealt with locally, where they are best understood, and at the same time enable the FBI to shift much needed resources elsewhere."

The FBI position was set forth in a letter dated February 4, 1986, to Senator Mark Andrews, Chairman of the Senate Select Committee on Indian Affairs. Director William Webster stated that:

> The FBI's working relationship with Montana Tribal and Bureau of Indian Affairs (BIA) offices is projected toward the eventual nationwide shifting of the FBI's primary investigative responsibilities for law enforcement on Indian reservations to the BIA, Department of the Interior (DOI), and the tribal police. During the past five years, extensive efforts have been implemented to accomplish this goal, which has been the policy of the Department of Justice since 1980. This policy encourages U.S. Attorneys having jurisdiction over Indian matters to utilize the investigative services of tribal and BIA police as a means toward self-determination.

The Director further noted:

> In spite of the implementation of this departmental policy, the FBI continues to conduct the majority of the investigations of major criminal offenses that occur on Indian reservations. In various conferences, meetings and seminars with U.S. Attorneys and FBI officials, it has been determined

that a variety of concerns has been expressed in regard to transferring investigative responsibilities in all major felonies to the BIA and tribal police. Among the concerns voiced is the importance of uniformity in delivering law enforcement services to the Indian people, the timeliness and thoroughness of investigations, the reporting of investigation for prosecutive consideration, and the ability to provide coverage of out-of-state leads when the BIA assumes the investigative responsibilities. Some U.S. Attorneys have indicated that they had not been satisfied with BIA's investigative response on cases currently within BIA's jurisdiction and did not favor a blanket transfer of responsibilities.

The Director concluded that:

> There will be no transition of law enforcement from the FBI to the Indian police until the Indian police develop a career-type law enforcement service, with officers who can practice the law enforcement skills that they are taught and become expert in them. The rapid turnover of officers in the Indian police ranks is a detriment to the effectiveness of Indian police organizations and must be addressed as a number-one priority, prior to placing undue emphasis on removing the FBI from its law enforcement responsibilities on Indian land.

In a statement presented to the House Committee on Interior and Insular Affairs on May 24, 1988, the Department of Justice noted that:

> ...The United States Attorneys have been encouraged for nearly a decade to accept direct referrals from tribal and BIA officers and investigators when they are competent to carry out such investigations without prejudice to the successful presentation of the case in Federal court.

And added that:

> Unfortunately, BIA and tribal officers are often not as well-trained as the Special Agents of the FBI in the collection of evidence, interviewing of witnesses, preparation of reports, or giving testimony in court. The BIA has done much in the past few years to upgrade their officers and the tribal police. We understand that BIA law enforcement funding has increased by 46 percent from Fiscal Year 1984 to Fiscal Year 1988. However, many of their better-trained and experienced officers leave BIA for better jobs offered by state and local law enforcement agencies. In addition, we hear constant complaints that tribal police are politicized, or are not impartial because of familial or social relations with victims, witnesses and suspects. Even BIA officers are subjected to political pressures because they report to local area directors and superintendents rather than to law enforcement officers in a chain of command.

At present, the majority of Crime on Indian Reservation (CIR) matters are handled by fourteen of the fifty-eight FBI field divisions. Most of the Special Agents who investigate CIR matters are assigned to resident agencies (small satellite offices) which are located throughout the field divisions' territories. In no other area of the FBI's work does the Special Agent's role so closely resemble that of a police detective investigating crimes of violence. A major problem for Special Agents working Indian reservations is that of distance between the FBI office and the scene of the crime. Although Special Agents are expected to respond immediately to the most serious cases of violent crimes, travel time of three-to-four hours is not unusual in many areas. This travel time can be even greater during the winter when roads are covered by snow or washed-out by flooding. Compounding this problem is the fact that there are few large population centers on the reservations. As a result, investigating Special Agents do rely heavily on the tribal or BIA police to maintain the crime scene, preserve evidence, and identify witnesses prior to their arrival. In order to investigate effectively such crimes, interagency cooperation is essential.

Although as I stated above, fourteen field divisions conduct the majority of CIR investigations, our principal CIR offices are Minneapolis, Phoenix, Albuquerque, and Butte.

Investigative caseloads can vary considerably from one field division to another, based upon whether the U.S. Attorney has issued prosecutive guidelines.

The Minneapolis Division covers fourteen reservations with a total population of approximately 68,000 residents, located in Minnesota, North Dakota, and South Dakota. Because the U.S. Attorneys for Minnesota and North Dakota have declined to issue prosecutive guidelines for CIR investigations, each violation is presented to the U.S. Attorney for a case-by-case decision. Consequently, informal understandings have been established on a reservation-by-reservation basis with BIA authorities that they will handle the nonserious assaults and low monetary value property crimes.

The Phoenix Division has investigative jurisdiction on 20 Indian reservations with a total population of approximately 244,000 residents. Prosecutive guidelines have been established by the U.S. Attorney for the District of Arizona. By mutual agreement, these guidelines specifically delineate investigative responsibility among the tribal police, BIA, and FBI. Minor criminal violations are investigated by tribal police, more serious crimes are handled by BIA, violent crime and complex investigative matters are referred to the FBI.

The Albuquerque Division exercises Federal jurisdiction on 20 Indian reservations with a total resident population of approximately 250,000. The U.S. Attorney for the Federal District of New Mexico also has formulated explicit prosecutive guidelines which, by mutual agreement, assign specific levels of responsibilities to tribal police, BIA, and FBI. These guidelines are virtually identical to those which exist in the Federal District of Arizona.

The Navajo Tribe, utilizing the provisions of Public Law 93-638, has initiated plans to replace the BIA investigators and have the tribal police assume their investigative responsibilities in Arizona, Utah, and New Mexico. For a variety of reasons, the tribal police do not generally possess the training or competence of the BIA personnel; consequently, our Phoenix and Albuquerque Divisions anticipate a major increase in work load.

The Butte Division exercises investigative jurisdiction on six Indian reservations in Montana and three Indian reservations in Idaho, with a total population of approximately 35,000 residents. Prosecutive guidelines have been issued in the Federal District of Montana; however, in the Federal District of Idaho, the U.S. Attorney makes prosecutive decisions on a case-by-case basis and no specific guidelines have been established.

Although many U.S. Attorneys are reluctant to assign significant responsibility to the BIA or tribal police, the U.S. Attorneys in Albuquerque and Phoenix have encouraged the BIA and tribal police to assume greater investigative responsibilities. The FBI and U.S. Attorneys' Offices have assisted with this approach and have conducted numerous local training schools for BIA and tribal police in the areas of report writing, investigative techniques, crime-scene search, and evidence preservation.

III. Tribal Corruption

Our investigations into tribal corruption and other forms of fraudulent activity have encountered difficulties which are unique to the reservations. As the Committee is aware, FBI investigations have resulted in the successful prosecutions of Federal and state government officials for bribery, conflicts of interest, and misappropriation of official funds. Although Title 18, U.S. Code, Section 666, has been amended and now prohibits tribal officials from accepting bribes while engaged in tribal business, existing case law is still unsettled regarding the acceptance of gratuities by tribal officials. Even if the courts hold that Title 18, U.S. Code, Section 666, includes gratuities, there will still be problems with the enforcement of the statute. For example, in cases involving a gratuity given for future consideration, there is always difficulty in establishing the direct connection between the gratuity and the resulting official act. The requirement to clearly establish the quid pro quo exacerbates the difficulties in successfully prosecuting tribal corruption. Considering the vast sums of Federal funds which are directly provided to the tribes, it is my personal view that it would seem prudent to hold tribal officials to the same standards as Federal officials.

Another pattern of activity that we frequently encounter is gross conflicts of interest among tribal officials. Title 18, U.S. Code, Section 208, explicitly prohibits Federal officials from conflicts of interest; however, there is no such prohibition for tribal officials. Tribal leaders who are responsible for the administration of millions of dollars of Federal funds have contracted with themselves to perform certain services. In some instances, they have established entities in which they have a vested interest or ownership in order to contract for the same Federal funds over which they exercise control.

Title 18, U.S. Code, Section 1163, provides criminal sanctions for individuals who steal, embezzle or convert the funds of an Indian tribe to their own use. However, successful prosecutions of theft and embezzlement require the existence of detailed financial records. Few tribal governments maintain adequate financial records. In one instance, $15,000 of Federal funds from a food assistance program was given to a female employee to pay for cosmetic surgery. The tribal official responsible for the administration of this program did not know if any financial records had been kept or where they could be found. Numerous irregularities were alleged in the programs this official controlled, but the lack of any type of records precluded successful prosecution.

Several tribal officials in Arizona were alleged to have embezzled $35,000 of tribal funds. During the investigation, they claimed they had used the funds for official reasons. No records could be located and neither tribal nor Federal regulations required that a record of these expenditures be made. These cases exemplify the types of difficulties our Agents confront in their investigations. Because the Committee has already heard testimony associated with the Indian Preference Program, I will merely add that such a system has a tremendous potential for abuse. A myriad of Federal agencies support a variety of programs on the reservations. Many tribes commingle the funds received from several Federal agencies; thus, compounding the inherent difficulties in conducting an effective audit. We believe the minimal oversight and lack of proper accounting procedures undoubtedly encourage fraud and waste.

IV. Organized Crime Infiltration of Indian Gaming

On October 16, 1988, the Indian Gaming Regulatory Act became Public Law 100-497. Public Law 100-497 permits Indian tribes to have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not prohibited by Federal or state law and amends Chapter 53, Title 18, U.S. Code, by adding three new Federal violations: Section 1166, Gambling in Indian Country; Section 1167, Theft from Gaming Establishments on Indian Lands; and Section 1168, Theft by Officers or Employees of Gaming Establishments on Indian Lands.

As a result of the passage of Public Law 100-497, the Indian Gaming Act, we do anticipate an expansion in investigative responsibilities. In a statement presented to the Senate Select Committee on Indian Affairs on June 18, 1987, Ross O. Swimmer, Assistant Secretary for Indian Affairs, Department of the Interior, noted that in previous testimony provided to the 99th Congress, the Department of Interior had reported the existence of 108 gaming facilities on Indian lands and that 104 of those had bingo, 93 had pull tabs or punch boards, 15 had card games, 4 had casino gaming and 15 had other gambling activities. According to Assistant Secretary Swimmer, "...A national estimate of $100 million in gross receipts from these activities would not be excessive and that one tribe reported a gross annual receipt from gaming of $15.5 million." In the State of Oklahoma, where I was formerly in charge of all FBI operations, there are approximately 26 Indian bingo games, 7 of which reported annual gross revenue in excess of $1 million. The Creek Nation of Tulsa has reported a net dollar volume in excess of $18.5 million in 1988. Past experience in Las Vegas and Atlantic City has clearly shown that high-stakes gambling attracts the interest of organized crime. When organized crime elements cannot directly control the management of the gaming establishments, attempts are made to exercise indirect control by corrupting the vendors, labor unions, and other ancillary entities which provide the services that enable the gambling operation to function. Even when there is no organized crime presence, the nature of gambling itself is conducive to an increase in crime. The FBI's experience has been that high-stakes gambling produces a variety of attendant criminal activities, e.g., labor racketeering, extortion, crimes of violence, bribery, public corruption, prostitution, and narcotics offenses.

As the Committee is aware, the majority of Indian gambling operations are managed by non-Indian contractors. Under an arrangement with the BIA, we do review our records for any derogatory information on these individuals when they contract with the tribes and we furnish the results of our records review to BIA. We are aware that organized crime elements have been attempting to increase their influence on some reservations and we presently have ongoing investigations in this area, which I cannot discuss at this time. I can assure the Committee that we are fully prepared to assist the tribes in preventing organized crime from gaining control of the emerging Indian gaming industry.

V. Child Sexual Abuse

The inclusion of felonious sexual molestation of a minor as an offense within the Major Crimes Act has greatly increased the FBI's investigative caseload in Indian country. To interview a victim of child sexual abuse can be extremely difficult in most Indian communities. Indians living on reservations are geographically and culturally separated from the American mainstream. A problem which frequently occurs is that the investigator and the victim are from different cultural groups; consequently, misunderstandings can easily arise. Successful interviews in these cases require that an investigator be knowledgeable in the cultural background and values of the victim.

Our Phoenix Office has concentrated its efforts against those individuals who use the opportunities offered by their employment to molest young children. Convictions have been obtained in several major investigations of pedophiles who were employed as teachers in BIA and tribal schools. In one of those investigations, a search of the subject's residence uncovered a document which indicated that sexual activity had occurred between the subject and 142 male students. The subject in this case has been sentenced to life in prison. Because the subject was a BIA employee, 53 of the victims have filed a $265 million lawsuit against the BIA for damages.

An innovative approach which is utilized by our Minneapolis Division, among others, is the team concept. The team investigating a child sexual abuse allegation has certain core members who remain constant. The core team is supported by a larger group of members which varies according to the facts of the case and individual schedules. The core members of the team are an FBI Agent, a social worker, a clinical psychologist, a victim/witness coordinator, and an Assistant U.S. Attorney. The FBI Agent conducts the investigation and presents his/her findings to the Assistant U.S. Attorney who makes the prosecutive decision. The social worker usually conducts the initial interview of the victim, and frequently assists with the FBI interview, and arranges the medical and psychological interviews of the victim. The clinical psychologist examines the victim and recommends appropriate treatment. The victim/witness coordinator maintains contact with the victims after indictment, until the trial is completed, and assists them in their dealings with the court system. As a result of this team effort, the successful prosecution of child abusers is facilitated, while the child is protected from further victimization. We plan to evaluate the efficacy of this concept and we may increase its utilization by our other field divisions.

Personnel from our field offices have previously testified before this committee and provided an even more detailed account of our efforts in dealing with these crimes.

At our annual in-service training which we hold for Special Agents who investigate crimes committed on Government reservations and Indian reservations, we do provide instruction in conducting child sexual abuse investigations. However, as the

Committee is undoubtedly aware, this is not merely a criminal justice problem, but is symptomatic of the larger socio-economic problems which exist on the reservations.

Although the frequency and severity of crimes committed in Indian country present the FBI with a unique series of challenges, we will continue to fulfill our investigative responsibilities.

Gentlemen, this concludes my opening statement and I will be happy to answer any questions that you may have.

LUMMI INDIAN BUSINESS COUNCIL
2616 KWINA RD. • BELLINGHAM, WASHINGTON 98226-9298 • (206) 734-8180
DEPARTMENT ______________ EXT ______

4

TESTIMONY OF R. BRUCE HALEY,
LAW AND ORDER ADMINISTRATOR, LUMMI TRIBE
BEFORE THE SPECIAL COMMITTEE ON INVESTIGATIONS

JUNE 8, 1989

Honorable Chairman and Members of the Special Committee on Investigations, I wish to thank you for allowing me to testify today, and I would like the following statement included in the official record of these hearings.

FUNDING

There have been allegations of unprofessionalism within the Bureau of Indian Affairs and tribal law enforcement. Indian law enforcement has made giant strides in the last thirteen years with which I have been associated. Indian tribes have done much to become professional and respected law enforcement agencies. Even with minimum funding, equipment, and a confusing jurisdictional maze, tribal police have managed to recruit, select, and train Indian law enforcement officers that are professional and dedicated to the tribes and Indian people.

If the Bureau of Indian Affairs and Office of Management and Budget would request sufficient funds to provide adequate funding for salaries that would keep trained Indian officers and provide adequate personnel to protect persons on the reservation, most of the "horror" stories you have heard about Indian law enforcement would not be around. A case in point, in FY 88 Congress voted a

LARRY G. KINLEY
Chairman

RANDY J. KINLEY
Vice Chairman

SAMUEL M. CAGEY
Secretary

RICHARD P. JEFFERSON
Treasurer

RONALD F. FINKBONNER
Councilman

GERALD I. JAMES
Councilman

WILLIAM E. JONES
Councilman

DAVID H. JEFFERSON
Councilman

ERNEST J. JEFFERSON
Councilman

MERLE B. JEFFERSON
Councilman

VIRGIL L. WILLIAMS
Councilman

$100,000 increase in the BIA law enforcement contract to the Lummi Tribe. It took over six months and a trip back to Washington, D.C. to meet with the Washington State Delegation and the Senate Select Committee on Indian Affairs for the BIA to release the funds to the Lummi Tribe.

In FY 89, the BIA did not request the additional $100,000, so the Lummi Tribe requested the funds again and Congress subsequently voted to appropriate the same $100,000 to the Lummi law enforcement contract and make it a permanent add-on. But again in the FY 90 budget, the BIA again has not requested that money to be added to the Lummi's law enforcement contract. This is an example of why tribes feel that the BIA central office is doing all it can to have PL 638 contracting fail.

In March 1988, Governor Gardner of Washington signed the retrocession bill for the Swinomish, Chehalis, and Quilliute tribes, and Congress voted for $150,000 for each tribe's law enforcement contract. Here it is June 1989, and that money has yet to be given to the tribes for their law enforcement contracts.

TRAINING

The BIA Indian Policy Academy (IPA) is located at the U.S. Department of Treasury, Federal Law Enforcement Training Center (FLETC) in Marana, Arizona. With FLETC giving certification and training to the Indian Policy Academy, it has gained a higher standing in the states where BIA and tribal police need to be recognized as professionals. The IPA has become certified in all but a few states and enjoys recognition as a quality federal academy. Officers who graduate from IPA are recruited by many state, federal, and local police agencies. Officers who graduate and gain experience on Indian reservations are recruited by other agencies that can pay better salaries, offer fringe benefits, and provide better recognition to law enforcement professionals. The BIA needs to seek better benefits for law enforcement officers to keep them working within Indian law enforcement agencies. Until this is accomplished, tribal police agencies will be just a training ground for others.

JURISDICTION

Congress should be urged to repeal PL 93-280, so tribes and the federal government have complete jurisdiction on reservations. With the number of tribes requesting retrocession from the states, it should be clear that PL 280 is not working. In addition, Congress should provide legislation that allows tribes criminal jurisdiction over non-Indians on their reservations.

This would reverse the court's decision in Oliphant-Suquamish Tribe and allow consistent justice for all. There have been many instances of injustice on Indian reservations. For example, in 1987 a non-Indian killed an Indian on the Lummi Reservation and then set fire to his house, which was on trust land, to conceal the crime. The non-Indian was tried in Whatcom County Superior Court and received a fourteen-month jail sentence. He is presently living on the Lummi Reservation, and intimidating the people there.

THEFT OF NATURAL RESOURCES

The Northwest tribes do not have oil on their reservation, so I cannot address the theft of that resource. However, there have been large thefts of other natural resources, such as commercial fishing, crabbing, oysters, and clams, among others, by non-Indians trespassing on Indian tidelands. The Federal Government will not take any action to police, investigate, or prosecute any trespass with intent to hunt or fish on an Indian Reservations is violation of federal law (18 U.S.C. Section 1165). The treaty right to commercially fish is important to the Northwest tribes and the theft of this resource by non-Indians is taking a resource that cannot be replaced in the amounts that are being stolen.

GAMBLING

I have been to a number of Indian bingo operations and have spoken to their management and security personnel. At the Swinomish Reservation, their bingo operations was run by a manager who was allegedly stealing thousands of dollars a month. When the tribe contacted the FBI, the manager fled to Canada. He has now been replaced by a tribal member who has over 20 years' experience in banking, and the bingo operation now provides money for the tribe's law enforcement, recreation, and many social services that the tribe cannot get funds for from the BIA.

In 1983, the Lummi Tribe was approached by an organization to assist in a bingo and blackjack operation to be run on the Lummi Reservation. Before the Lummi Tribe secured loans to start this business, it asked the FBI to do a check on this organization. The FBI told the Lummi Tribe that it could not do a background check for them. Several months later, and after the tribe had taken large loans out and employed many Indian people, the FBI closed the operation down, saying that the organization had "ties to organized crime."

CORRUPTION

I have been involved with many Indian tribes within the last thirteen years. I have not seen corruption with the four tribes I have worked with. There have been specific instances where tribal employees have been involved in theft and embezzlement, but the tribes have urged investigation by the tribal and federal authorities. The tribal councils have recognized that only through making law and order a priority, and backing the tribal police and courts, can they assert their own sovereignty and jurisdiction.

SEXUAL ABUSE

The Lummi Tribe in the last six years has submitted over 60 child sexual abuse cases for investigation and prosecution by the Federal Government. I know of only one case that was taken to trial which resulted in a finding of guilty. It was a rape by an uncle upon his nephew. Congress must make it clear to the Federal enforcement agencies and the U.S. Attorney's office that the investigation and prosecution of the sixteen major crimes in Indian country, especially the two involving child sexual abuse, be aggressively handled. There must be a message sent to everyone that the federal authorities consider their responsibilities to Indian tribes as an important area. Indian children are being victimized and sexual offenders are going unpunished. The Lummi Tribe had multiple offenders bragging how they have raped boys and girls and have not had to go to federal court. The Tribes take them into tribal court, but it does not have either the money or expertise to successfully prosecute or sentence these sensitive cases. Only Federal investigation and prosecution can show the Indian community that the U.S. Government takes its trust responsibility seriously.

On Monday, June 5, 1989, the day before I left for these hearings, four child sexual abuse cases came across my desk. I feel sorry for the victims and their families. Our local FBI agents and I feel a sense of frustration and hopelessness that these cases probably will not reach trial at the Federal level.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

June 8, 1989

Honorable Dennis DeConcini
Chairman
Special Committee on Investigations
United States Senate
Washington, D. C. 20510-6450

Dear Mr. Chairman:

Thank you for your invitation to testify before the Special Committee on Investigations. I regret that my schedule will not permit me to attend. Dom Nessi, Director of the Office of Indian Programs, will represent me at the hearing. He has considerable expertise in Indian Housing and I am confident you will find him to be an excellent witness.

Over the past few years, the U.S. Department of Housing and Urban Development has taken steps to improve the delivery of the Indian Housing program. I am committed to ensuring that this progress continues.

I recently met with the Headquarters and field staff assigned the responsibility of managing this program. During the meeting, I emphasized my personal interest, concern and the importance I place in assisting the Native American community of this country achieve a living environment of which we all can be proud. This environment includes quality housing with ample opportunity for homeownership and self-management; the opportunity to foster economic independence through employment and commerce; and, finally, an environment free from substance abuse and all of the associated social ills which accompany such abuse.

As I said earlier, we have made important strides in the management of the Indian Housing program. We have reduced the average processing time of a project by almost twenty percent since 1985. The cost of an individual units has remained virtually level, despite inflation, over the past six years. The quality of the units built is visibly superior to that of previous years. And, we continue to develop program policies and procedures suited specifically for Indian people.

I realize, however, that this program is far from perfect and we will continue to pursue these and other improvements. It is absolutely essential that we reduce processing time even further. We must continue to clarify the relationship between the Indian housing authority and HUD in order to remove any remaining ambiguity over responsibility for program delivery. We must guarantee that a quality housing product is delivered to our ultimate clients, the residents. And, finally, we must be ever vigilant to ensure that the Indian housing program works for the benefit of the resident, and not for those persons who seek to use the program unfairly or improperly for personal gain.

The work of your Committee will play an integral role in this endeavor. I understand that, thus far, many productive meetings and positive suggestions have resulted from our combined efforts. I sincerely appreciate the objectivity and fairness of Committee staff and I pledge that you will continue to receive assistance of the highest quality from me and my staff.

Very sincerely yours,

Jack Kemp

Jack Kemp

Intertribal Timber Council

BOARD OF DIRECTORS
President D. Fred Matt Flathead Vice-President Don Peasley Colville Secretary Elliott Moffett Nez Perce Treasurer Lawrence Waukau Menominee BOARD MEMBERS Joe DelaCruz Quinault Gary Ray Makah Tribe C. Dexter Gill Navajo Wilkie Gregg Sr. White Mountain Apache Zane Jackson Warm Springs W. Don Tahkeal Yakima Indian Nation C. Lawrence Blythe Eastern Band of Cherokee Indians

STATEMENT OF D. FRED MATT,
PRESIDENT, INTERTRIBAL TIMBER COUNCIL,
BEFORE THE
SPECIAL INVESTIGATIONS COMMITTEE
OF THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
REGARDING INDIAN FORESTRY
JUNE 8, 1989

I am Fred Matt, President of the Intertribal Timber Council, or I.T.C.

The I.T.C. is an affiliation of 59 Tribes and Alaska Native Organizations that collectively own better than 90% of the 5.6 million acres of Indian commercial timber land managed in trust by the B.I.A.

Tribes started holding annual timber symposia in 1976 to discuss their mutual concerns about the B.I.A.'s inadequate management of their forests. Out of those gatherings, the I.T.C. was founded in 1979. However, rather than attacking the B.I.A., the I.T.C. chose to work with the Bureau to cooperatively build a better Forestry program.

By and large, this policy has worked. At each year's Symposium, where the B.I.A. itself is an active participant, the I.T.C. issues Findings and Recommendations to the B.I.A. about possible improvements to the Forestry program. The B.I.A. responds about what it can do to meet those recommendations. As a result of working together, we believe Forestry has become one of the best programs in the B.I.A..

However, the program is beginning to strain again. After a significant Congressional increase in B.I.A. Forestry funding and personnel in FY 1977 and '78, the program has basically remained flat. In fact, over the past five years, one of the principal tasks facing the I.T.C. has been working to prevent budget cuts of up to 33% proposed by the Administration.

But, even at restored funding levels, the Forestry program is becoming seriously deficient. This is demonstrated by the following examples:
- Despite the presence of a legal trust responsibility to Tribes, funding for Indian forestry is way below the U.S. Forest Service and the B.L.M. The House Appropriations

MEMBER TRIBES
Bad River Band of Lake Superior Chippewas
Bois Forte Band of Chippewa
Choctaw Nation of Oklahoma
Coeur d'Alene
Colville
Confederated Salish and Kootenai
Confederated Tribes of Grand Ronde
Copper River Native Association
Crow Tribe
Eastern Band of Cherokee
Fond du Lac
Forest County Potawatami Community, Inc
Fort Bidwell Indian Community Council
Goldbelt, Inc
Grand Portage
Haida Corp
Hoopa
Hualapai Tribe
Jicarilla Apache Tribe
Kalispel Tribe of Indians
Klawock Heenya Corp
Klukwan Forest Products, Inc
Lac Courte Oreilles
Lac Du Flambeau Band of Lake Superior Chippewa Indians
Leech Lake Chippewas
Lummi
Makah
Menominee
Metlakatla Indian Community
Minnesota Chippewa Tribe
Mississippi Band of Choctaw
Navajo Nation
Nez Perce
Northern Cheyenne
Passamaquoddy
Penobscot Nation
Quileute
Quinault
Red Lake Tribe
Rosebud Sioux Tribe
San Carlos Apache Tribe
Sealaska
Seth-De-Ya-Ah
Shaan-Seet, Inc
Siletz
Spokane
Stockbridge Munsee
Tanana Chiefs Conference, Inc
Tatitlek, Corp
Tlingit & Haida Central Council
Tulalip
Tule River
Turtle Mountain
Umatilla
Warm Springs
White Earth Tribe
White Mountain Apache
Yakima

P. O. Box C • Warm Springs, OR 97761 • (503) 553-1061

Committee reported in FY 1985 that B.I.A. spends $1.67 per acre for Indian forest management while the U.S. Forest Service spends $2.34 an acre and the B.L.M. spends $7.39 an acre.
- If adjusted for annual cost increases, the $16.7 million in specific additions made to the B.I.A. Forestry program since FY 1977 should be funded today at $26.1 million.
- There are no funds for management or protection of the 6.8 million acres of Indian woodlands, most of which are in the southwest, despite their annual economic benefit to the Tribes of at least $39 million.
- The commercial forest land base is expanding, without any additional funds. Over 1988 alone, at least 52,000 acres of commercial Tribal forest lands were added to the B.I.A. trust responsibility.
- Although Congress found it necessary to add 262 personnel positions to B.I.A. Forestry in FY 1978 to enable meeting the full annual allowable cut, there are approximately 124 unfunded and empty positions in the program.
- From 1980 through 1988, only about 66% of the marketable annual allowable cut was harvested. Today, B.I.A. staffing constraints are preventing Tribes from taking full advantage of one of the strongest timber markets in history.
- Timber sales management responsibilities have increased with new environmental and archeological requirements, placing increased demands on B.I.A. manpower without added funding or staffing.
- The B.I.A. Division of Forestry itself has determined, in a February, 1989 study of its FY 1987 funding and staffing needs, that an additional $26 million and 507 personnel are needed-over and above the present $33 million and 590 personnel - to achieve a "state-of-the-art" forest management.

Because these program shortcomings and funding amounts are so substantial, the I.T.C. is seeking an independent analysis of the status of BIA forest management.

With the B.I.A. funding and staffing needs study, an independent second opinion, and perhaps the findings of this Committee, the timber Tribes hope to have a solid basis upon which we can plan for the proper management and protection of our forest resource into the next decade.

I would like to thank the Committee for this opportunity to appear before you on Indian forestry. It is an extremely vital topic which fully warrants your attention and concern.

THE NAVAJO NATION

Leonard Haskie
Interim Chairman
Navajo Tribal Council

Irving Billy
Interim Vice Chairman
Navajo Tribal Council

Testimony of the Navajo Nation
on Indian Forestry
Before the Select Committee on
Indian Affairs
Special Committee on Investigation

June 08, 1988

The Navajo Nation is pleased to be here today to discuss Indian Forestry. Our testimony is a Navajo view point with examples, and concerns of problems with Navajo Forestry management, and while we cannot speak for our brothers, the issues and concerns are shared with our other timber owning tribes with whom we are associated.

The Navajo Nation contains 4,559,045 acres of Forest and woodlands, one third of the total Navajo Lands. For perspective, this is an area almost the size of the entire State of New Jersey. Of this area, 523,000 acres is prime ponderosa pine commercial sawtimber. The balance of 4,036,045 acres is woodlands comprised primarily of pinyon, juniper and some Riparian species.

Since timber cutting began in 1880, the Forest Management has progressed to the point where we have an efficient sawmill enterprise cutting timber under the sustained yield concept operating with a current ten year forest management plan. There have been differences of philosophy between the tribe and the B.I.A. over management of the forest in the past. However, we are most concerned with today and the future.

The Navajo Nation has utilized the self determination process under PL-93-638 to begin to assume authority over the forest and woodlands and desire to continue as we believe the Navajo resources should be managed by the Navajo. However, we are concerned about continuing this process because of what we see happening today. At this time I would like to point out that we are concerned with the future economy of both our people and the adjacent off Reservation communities. We need each other. And improvement in the Navajo forest economy will directly benefit our neighbors, and that is good for all.

There has been a history of B.I.A. Forest Management being funded to meet only the minimum level of need. As funding reductions are implemented we see the forest management needs not meeting even the minimum level any longer. Funding levels have decreased due to several factors. First, there are the straight budget cuts that have been proposed and implemented. Second, there is an economic decrease caused by maintaining current level funding with no consideration for inflation costs of doing business. Third, there is added responsibilities given to federal agencies programs through laws or administrative direction without funding provisions to carry out the additional burden. On the Navajo Reservation, all of our timber is sold to our own tribal enterprise, but due to inadequate B.I.A. manpower and funds we are unable to obtain the road improvement designs and the timber sale package in a timely manner for the enterprise to plan and implement the work to ensure efficient operation of our sawmill which contributes significantly to Navajo employment and financial self-sufficiency. There is $87,000,000 of total economic output generated each year by this enterprise.

Of major concern to the Navajo and many others is the ability of B.I.A. to respond in a timely manner to the many federal laws and regulations protecting the environment, archaeology and culture of the Indian Nations. It is our understanding that the B.I.A. Forestry must comply with the following laws:

National Historic Preservation Act (16USC470)
Archaeological Resources Protection Act (PL-96-95)
Archaeological and Historic Preservation Act (PL-93-291)
National Environmental Policy Act (PL-91-190)
American Indian Religious Freedom Act (PL-94-341)
Historic Sites Act of 1935 .(PL-74-292)
1906 Antiquities Act (34 Statutes 225)
Endangered Species Act of 1973

As these statutes began to be enforced, there were no additional B.I.A. personnel funded to conduct the necessary work. To ensure compliance with federal law, the B.I.A. has had to extend the time it takes to complete timber sales which keep our mills operating. In addition, funding and personnel are diverted from B.I.A. Forest Management and timber sale supervision to prepare the necessary surveys and paper clearances in compliance with these laws. On the Navajo forest it is costing $170,000 + each year to obtain the required archaeological and historic clearance to conduct a timber sale. The funding comes from monies being diverted from other forest management needs. This current year, the B.I.A. Forestry has had to ask the Navajo Tribal Forestry Department to find money to hire personnel to conduct the archaeological surveys, a federal requirement and responsibility, otherwise our sawmill would cease operations because the timber sale cannot take place. The Navajo B.I.A. Forestry has requested supplemental budgets for these costs for the past three fiscal years, but have received virtually nothing. These surveys and clearances should be funded separately and sufficiently and not diverted from current timber management appropriations.

There are also other issues which complicate the situation and create the high costs and time delays. First, there is no standard policy direction for the B.I.A. Archaeologists to follow in applying the archaeology and historic protection statutes to Indian forests. Each Area Archaeologist interprets the National Historic Preservation Act and Regulations in 36CFR, Part 800 as he or she sees it. As personnel transfers take place, so does the interpretation of what it takes to be in compliance with the Act. This is extremely costly in addition to being very confusing. The second issue is the matter of archaeological and historic clearances being approved by State Historic Preservation Officers. The Archeological and Historic resources are the property of the Navajo Nation. These lands and resources extend into three separate states. Each state has it's own Historic Preservation Officer who operates much as B.I.A. Archeologists, by interpreting the Federal Act as they see it. Thus a state official determines what is acceptable or not acceptable for survey methods and clearances on Indian lands. The State Historic Preservation Officer currently plays a role superior to that of the tribes in managing the tribes' cultural resources. This results from the role established for the State Historical Preservation Officer's in 36CFR Part 800. Here tribes are relegated to the subordinate role of "interested persons". This is completely inappropriate because tribes exercise both sovereignty and dominion over these resources. Furthermore, our forests cross state lines with differing levels of requirements. To be consistent, we must follow the requirements of the state with the most complicated interpretations, which obviously costs much more. In addition to high survey costs, there are also losses sustained because we cannot harvest timber that falls within an archaeological site. Due to high costs of mitigating sites and the slow approval process, it is standard procedure to avoid all sites identified, to ensure no violation of the law occurs. The average annual timber sale on the Navajo forest has 300 identified archaeological or historical sites, which average one (1) acre each in size. Most of these sites are not significant, but, by the time the approval process is complete it is too late to go back through the forest and "undesignate" sites. Consequently 300 acres are lost each year due to insufficient management and inadequate B.I.A. staffing levels. This has an impact of $2,175,000 loss in total economic output to the local Indian and adjacent Non-Indian economy, each year.

The same problems hold true for clearances needed in complying with the Endangered Species Act. Here again, there is no funding for B.I.A. personnel to conduct the surveys. The Navajo area doesn't even have a qualified biologist to make surveys or determinations if mitigation measures need to be taken. This determination is referred to the U.S. Fish and Wildlife staff who, again, differ on necessary measures, depending upon which state they are in, and what biologist we talk with.

With the emphasis on timber sales there has been a neglect of the vast woodland areas which is even larger in acreage than the timber areas. Within Navajo, there are 523,000 acres of timber managed at below minimum levels, and 4,036,045 acres of pinyon and juniper woodlands which receive no management. These woodlands are utilized extensively by the Navajo people for fuelwood, building hogans, posts and nuts for food. Over 70% of the households on the Navajo still rely primarily on wood for heating, cooking and building. This requires 233,000 cords of wood per year. We have been observing a steady decline in the wood supply in the more populated areas. Along with this comes a decline in other resources such as wildlife, water quality, nuts for food and sale which help meet some basic needs. We are extremely concerned about the future of this basic woodland resource.

Currently there are no basic inventories and growth data to help determine woodland management needs. When you include all of our forest and woodlands, we find that only 11% of the total acreage has had management efforts placed on it. In 1987, the B.I.A. recognized the need to provide management over these vast acreages, and prepared an overview of the woodlands, which showed a need for management. In the FY90 budget, they requested $1,000,000, to meet national needs approximately one third of the actual need, to begin inventories for management. For some reason, the request was not included in the budget that was sent to Congress. These woodlands are important resources for our people and potential businesses which encourage economic development and Navajo self-sufficiency. Unless inventories and management plans are prepared, there can be no effective development taking place, and the maintenance of supplies for personal needs and environmental concerns is in doubt.

When we speak of forest and woodland management, it is important that we realize that we must consider and include all of the resources associated with the forest environment. Any one resource cannot be effectively managed, utilized and protected without affecting some or all of the other resources. This has not been done, resulting in degradation of all the associated resources such as wildlife and water. We must also remember that the importance of the Indian forests do not stop at the reservation boundary. They provide watershed for downstream non-Indian lands, wood products, recreation opportunities and economic benefits for non-Indian communities. Equally, the lack of good management on Indian lands contributes to degraded resources and economies off the reservations. The Indian forests are of prime importance to the Indian people, but they are also an integral part of the United States environment and economy. There should be at least a comparable level of management investment in commitment to the Indian forests as there is in the U.S. National Forests, Parks and Wildlife refuges. Unfortunately this has not been, and is not now the case.

We would like to suggest some possible solutions to the concerns we have aired here:

I. The Forest Management budgets should be supplemented to provide adequate staffing for archaeological and biological survey clearances to meet the requirements of federal laws regarding Archaeological, Historical and Environmental surveys and clearances.

II. Make provisions for tribes to achieve primacy in archaeological and historical clearance determination by directing the Advisory Council for Historic Preservation to review 36CFR Section 800.1 (c) (2) (iii) where the provision states "An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting it's lands, provided the Indian tribe so requests, The State Historic Preservation Officer Concurs, and the council finds that the Indian tribes procedures meet the purposes of these regulations".

The Advisory Council should suspend the portion, "the State Historic Preservation Officer concurs". This will make provision for tribes to work directly with the Advisory Council for clearance procedures that meet both tribal and national concerns. State concurrence is certainly an infringement of tribal sovereignty.

III. The B.I.A. should be directed to recognize that the woodland trust resource is necessary for management and ensure that tribes are provided the funding to manage the woodlands along with timber areas for benefit of all resources within and affected by the tribal forest management.

In order to fulfill the U.S. Government's trust responsibility for Indian lands and resources, comprehensive and consistent Indian forest land management must be funded and implemented. Without this commitment, a breach of these trust obligations will continue to the detriment of all.

C. Dexter Gill, Forest Manager
Navajo Nation

TESTIMONY

for the Special Committee on Investigations

June 8, 1989

by

Ronald L. Trosper

Tribal Economist

Confederated Salish and Kootenai Tribes

Introduction

My testimony today addresses four issues important to our Tribe in management of our forested lands. We would like to see the federal government fulfill its duties by providing the fiscal resources necessary to provide adequate management in the following three areas: (1) integrated land and natural resource management planning, (2) resource inventories, and (3) response to market opportunities.

The Bureau has completed a finding and staff level analysis. Because my tribe wants to have that work reviewed by an independent organization, we endorse the Intertribal Timber Council's proposal for a second opinion.

My personal opinion is that we need a new approach to forest management. The long-term goal should be to build tribal capability in managing its forests. I am personally quite frustrated that the federal budget process and the current budget impasse forces Tribes, Senators, and the Bureau to examine only immediate payoffs. As this committee formulates its recommendations, I urge you to address structural change along with budget recommendations. The general direction of the change should be to support tribal control and capability in managing its land.

1. Integrated Land and Natural Resource Management Planning

Where are we today?

The Confederated Salish and Kootenai Tribes have successfully obtained a grant from Administration of Native Americans (ANA) to begin to develop a land use plan. A memorandum of understanding is being written between the Flathead Agency, Bureau of Indian Affairs (BIA) and Tribes.

The computer hardware and ACR/INFO TIN software for the Geographic Information System (GIS) is being purchased by the Tribes. Both the Tribes and Bureau are having themes digitized to be used during the planning process.

What are the consequences?

The BIA has not funded or developed a program to deal with the planning portion of integrated resource management. They are supporting digitizing land information for Geographic Information System maps. The Tribes have taken the planning initiative due to lack of BIA response.

With no additional funds or staffing priorities, present Bureau and Tribal Staffs will be shifted from regular duties to participating in the planning process. In our application to ANA, we wanted to spend $715,000 over three years for land use planning; our actual funding is $200,000 over 17 months. To cover the gap, we have reduced the scope of work and appropriated tribal funds. We will use current staff for some tasks, which will reduce the normal output of Bureau and Tribal offices. This is a burden as the Tribes and the Flathead Agency are not able to meet desired time tables on priority work tasks with their current staff.

The GIS work completed or nearly completed at this point has cost over $600,000. The cost division has been approximately 50/50, with the Tribes contributing slightly over half and the BIA the rest. We are anticipating additional themes for the IRMP in fiscal year '90 since about 85 percent of initial themes are digitized. We know that our initial themes are inadequate for state of the art integrated resource management planning. In addition, GIS is only a small part of the planning effort.

Good Consequences

The Bureau's Indian Affairs Manual 10 supplement 2 provides responsiveness to Tribal direction and ideas. It had Tribal input during the development stage. At the Flathead Agency, the supplement has continued to strengthen the Bureau and Tribal relationship and communications. It allows an integrated approach to timber harvest with Tribal direction.

Discussion

Funding needs to be a joint effort between the Bureau and Tribes but the Bureau must commit extra funding and staffing to participate in the IRMP process as required by Bureau policy.

The Forest Service and Bureau of Land Management (BLM) both commit a budget item for planning to cover all resources of which Forestry is one part.

I have not investigated the expenditures by the Forest Service on their plans. I have examined draft plans for nearby forests in Montana; they appear to be well-funded.

The federal trust responsibility on Indian lands should be comparable to the level of effort on other federal land. It is unreasonable to ask the BIA Agencies to do this with their present budgets and personnel. The Salish and Kootenai Tribes want to work with the Bureau to implement IRMP but it must be done without a reduction in current Agency performance.

2. Forest Inventory and Planning Work

Where are we today?

The Tribes and Flathead Agency are beginning the fourth measurement of the Continuous Forest Inventory (C.F.I.) in 1989. The result will support the fourth Forest Management Plan for the Flathead Indian Reservation.

A separate stand exam inventory has been completed on the lodgepole pine stands. The study includes data for management of post and pole size products, and it helped us design the proper facilities for our new scragg sawmill. The data is now ten years old and a limited plan exists to update it. The CFI growth study will be expanded to double its sample size in lodgepole pine from 30 to 60 plots. Two hundred new temporary prism plots will be used to estimate stocking. No other niche market or compartmental inventories have been performed. Therefore no plans have been completed.

What are the consequences?

The CFI is narrowly focused. It gives reservation-wide "averages" for volume and growth per acre. These averages are computed for uneven aged and even aged lands.

Because of its low intensity sampling the CFI cannot answer many important questions on an Indian forest regarding wood fiber. Its growth and volume tables are oriented towards dimension lumber. New niche markets such as post and poles, Christmas trees, export products, and unusual species need additional data. An inventory of land productivity would allow better planning.

Although the CFI helps managers decide how much to cut, it does not help managers decide where to cut. Application of modern computer models for harvest scheduling and harvest prescriptions require more intensive sampling. In addition, inventories must address general resource management concerns. Wood fiber production has to coordinate with watershed, recreation, wildlife, and other land uses.

The lodgepole pine inventory at Flathead addressed our wood fiber concerns in one case. But a follow-up inventory of similar size and scope has not been scheduled. In addition, only very recently has that data been moved to the Agency, where it can be readily manipulated.

In order to respond to the multiple resource management questions now being raised on Indian reservations, the conceptual basis of inventories needs examination. Forest managers need to be able to compartmentalize the forest that is, break down the forest into geographic units as well as resource categories. Detailed relationship data is needed to address matters such as new markets, the impacts of disease, recreation and wildlife use, and watershed impact from logging. Within each compartment, adequate data is needed for stands. This means stand - level inventories.

Many of the issues take unique form on each reservation. Tribal use of the land also varies by reservation. I think high involvement of Tribal leaders is necessary in rethinking the uses and purposes of inventories. Once redefined, a commitment should be made to support a continuing process of intensive data collection on Indian Forests.

Good Consequences

The Bureau has financed the majority of CFI to date and they are committed until 1996 by Congressional action.

The lodgepole pine inventory was financed by the BIA. A smaller inventory to assess the risk of lodgepole pine to mountain pine attack was financed with Federal Pest Control Funds. The Tribes contracted the inventory work.

Discussion

Last summer, I visited a ranger district on the Lolo National Forest to examine inventory data available on the ground in the Forest Service. That is an ordinary ranger station in the Forest Service. Their system is remarkable, with maps and on-line data readily available; we are nowhere close to them. Our trustee, the Federal Government, is managing its own Federal lands with more resources than it allocates to Indian land.

It is imperative that funding for forest inventories be continued after 1996. Forest lands change through management and non-management. The Tribes have to know how their forest is changing in growth, volumes, size of trees, and species composition. With this information, Tribes can pursue economic development without damaging important resources. Planning can provide improvements in production of wood along with wildlife habitat, scenic beauty, forage, and recreation.

Funding and staffing must be added making inventory possible for niche markets or compartmentalization of the forest and collecting information for resources other than wood fiber. This is essential for future development and professional planning on Tribal lands. The budget for inventory should include analysis and management reports as required.

The Confederated Salish and Kootenai Tribes are very interested in speciality market opportunities. When the Tribes ask the Bureau questions pertaining to export volume by location, utility poles, houselogs, Christmas trees, and small roundwood products, we want the Bureau to be able to answer quickly with accurate information.

Enlightened forest management is virtually impossible without good spatial inventory data. Modern forest management needs to use knowledge about the productivity of the land, its current use, and its relationship to other land. The alternative is intuitive management which can result in both resource destruction and sacrifices in economic development.

3. Responsiveness to Markets and Market Conditions

Where are we today?

Because of tribal priorities, the Bureau of Indian Affairs on the Flathead Agency has moved resources into lodgepole pine harvest. The Bureau has agreed to organize the harvest in the manner desired by the Tribes. We hope this indicates the Bureau staff will support our other marketing initiatives.

We are experiencing difficulties in our sawlog harvest because of BIA staffing reductions. When prices were low, the Salish and Kootenai Tribes reduced the cut. Now we find that the BIA is shorthanded.

The BIA has also sponsored a excellent Marketing and Business Development Study. We had already moved into a niche market recommended by the Study and we plan to examine other recommendations in it.

What are the consequences?

On the good side, we have been able to respond to market opportunities in lodgepole pine products. The Bureau is also cooperating as we develop new markets for our sawtimber.

Discussion

How can we persuade Congress, the Administration, and the BIA to take a long-run view regarding the marketing of forest products? In an ideal world, foresters would perform long-range planning and projects during recessions and prepare sales during booms. But budget logic does not follow good sense.

The past administration saw the low harvest at Flathead as a good reason to reduce funding. And now we are using high prices and our desire to cut as a justification for budget increases. By doing so, we also are encouraging short run thinking. When prices decline, as they will, we will replay this scenario unless something is changed.

I hope this committee can see that putting the principle blame on the BIA for this situation is an error. The entire federal budgeting process causes short-run thinking. I find it ironic that our political process is even more shortsighted than are businesses. My Tribal Council considers long run issues when approving or disapproving timber sales, when setting each year's budget, and when investing in land and capital. But they, too, are constrained by political perceptions about the importance of today.

4. Funding and Staffing needs analysis

Where are we today?

In July, 1988 a full program review was conducted on the Flathead Tribal and Bureau's Forestry Program. A common theme throughout the review was a lack of staff to carry out the forestry program. The review team felt the current staff was qualified and committed to the program but the scope of work exceeded their manpower workload.

The Bureau and Tribes have asked for $567,000 and 19 positions for the forestry branch. This request would be larger had we not already submitted to "budget realities." In truth, we also want to include a surveyor, a surveying assistant, a soil scientist, and a land scape architect. These positions are needed on a part time basis. An additional $45,000 would be needed for these services. Our Natural Resources Department will need at least two more positions in order to handle the work caused by expanded forestry activities.

The Tribes support the InterTribal Timber Council (ITC) request to add $225,000 to the Bureau of Indian Affairs forestry budget for an independent analysis of Tribal forest funding and staffing needs. While the Tribes agree with the BIA that there is a funding and staffing shortage, the Tribes would like a second opinion. The second opinion in tandem with the BIA Funding and Position Analysis will result in a needed and vital report on Federal Trust management of Indian forests.

What are the consequences?

In 1988 there were a large number of tasks, essential to state-of-the-art practices, that were not accomplished. Only 63% of the annual allowable cut selected by the Tribes was harvested in 1988. The predicted work projections for 1989 show the same shortfalls. The cause is mostly attributable to funding and staff shortages.

The lack of staff is the cause of four other important forestry functions not being performed:

1. Forest Inventory
2. Transportation Planning
3. Forest Hydrology
4. Forest Fuel Management

The full professional responsibilities of integrated resource management needs the expertise in these fields and other fields. These include:

5. Wildlife and Fish Management
6. Forest Range Management
7. Forest Recreation Management

Without proper funding and staffing the Tribes cannot meet their goal of multiple resource management.

Both the National Forest Management Act and the Federal Land Policy and Management Act mandate long-run planning for the Forest Service and the Bureau of Land Management. These agencies are generously funded and staffed to carry out such planning.

Good consequences?

The Bureau has provided a "Forestry Program Funding and Staff Analysis" with projection on needs up to 1995.

Portland Area Office is supportive of funding and staffing needs here at Flathead Agency.

The forestry review process pointed out the funding and staffing shortage.

Discussion

It is apparent more funding and staffing are needed to meet the Tribes' forestry goals. Alternative ways to provide the additional funding and staffing to the Agency or Tribes is needed. The Tribes do not have a preference on the alternatives but we believe it is imperative that the additions occur.

My personal preference is that the additional funds strengthen tribal capabilities. If Bureau capabilities are increased, tribal control of Bureau resource allocation should direct staffing decisions.

TESTIMONY OF GARY S. MORISHIMA
BEFORE THE SPECIAL COMMITTEE ON INVESTIGATIONS
OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON D.C., JUNE 8, 1989

I am pleased to appear before the Committee today to express my views concerning the Indian forestry program. My name is Gary S. Morishima. I hold a Doctor of Philosophy degree in Quantitative Science and Environmental Management from the University of Washington. I have both studied and been directly involved with Indian forestry issues since the late 1960's. I have advised the Quinault Nation in matters pertaining to natural resource management since 1974. As part of my responsibilities, I served the forest manager for the Quinault Nation for a number of years and have worked closely with the Intertribal Timber Council since its inception.

My testimony will focus on major deficiencies in the Indian forestry program identified in a recently completed Needs Assessment Survey completed by the Bureau of Indian Affairs (BIA). My remarks are based upon an examination of both the tabulated results of the survey and the source documents prepared in field, area, and central offices.

For perspective, I will preface my statement with a few comments regarding the trust responsibility of the United States, the Bureau of Indian Affairs (BIA), requirements for sustained yield management of Indian forest resources, Indian self-determination, the significance of Indian forest resources, and the inability of the BIA to provide state-of-the-art forest management services.

Fundamental Perspectives

Trust Responsibility:

There is a government-to-government relationship between Indian Tribes and the United States that flows from the Constitution and treaties. This relationship has been defined by numerous acts of the Congress, administered by the Executive Branch, and constructed by the courts.

Under this relationship, the United States has an obligation to protect, preserve, and administer the Indian estate for today's needs as well as those of future generations. The government-to-government trust relationship between Indian tribes and the United States carries with it commitments for long-term stewardship and full development of Indian resources. The trustee is required to perform its duties for the sole benefit of the beneficiary with the highest degree of good faith and with all the care, diligence, and skill at its command to ensure that the assets of the trust are managed to the "state-of-the-art."

The Bureau of Indian Affairs (BIA)

The Division of Forestry within the BIA is the principal agent of the United States in administering the trust responsibility for the management of Indian forest resources. The United States as the ultimate trustee is accountable for its actions and inactions with respect to the management of the Indian estate.[1]

The BIA's Division of Forestry has approximately 600 Full Time Equivalent positions. However, the number of positions remains woefully inadequate to provide state-of-the-art management services for Indian forest properties. Furthermore, a disturbingly high proportion of existing positions remains vacant.[2]

Tribes are likely continue to face substantial challenges in obtaining well-qualified personnel for management of their forest resources for the foreseeable future. Not only is there a high vacancy rate within current operations, a substantial portion of experienced personnel will soon be eligible for retirement.[3] Approximately 10-15 years of experience are necessary to gain the knowledge required to fill top-level forestry positions and there is currently a shortage of highly-qualified mid-level expertise within the BIA. Prospects for significant increases in the supply of professional foresters are not promising either. In the last ten years, the number of students enrolled in accredited natural resource and forestry programs across the country has declined by 42% and 53%[4], respectively. Given the demand expected by the necessity to replace retiring foresters in federal, state, and private industry, competition for well-qualified individuals to provide services for Indian forests will be fierce.

Sustained Yield Management:

The concept of sustained yield for Indian forests through conservation and resource development policies was formally instituted by the Wheeler-Howard Act, also known as the Indian Reorganization Act of 1934, and 25 CFR 163. Sustained Yield has been interpreted by the BIA as the preservation of Indian forest lands in a permanently productive state by applying silvicultural and economic principles in harvesting timber, i.e. the sale of Indian timber in accordance with sound business practices and regulation of harvest so as to insure method and order and to provide a basis for a perpetual forest business.

---

[1] In United States v. Mitchell, the Supreme Court held that the United States is answerable in monetary damages for breaches of standards applicable to a private fiduciary. U.S. v. Mitchell, 77 L.Ed. 580, 596 (1983).

[2] The May 1988 Forestry Program Funding and Position Analysis For FY 1987 reported vacancy rates of 16%, 18%, and 13% for professional foresters, technicians, and support personnel, respectively. Due to Indian preference policies, self-determination, inadequate funding, and other factors contributing to uncertain career opportunities for non-Indians, the BIA has had difficulty attracting and retaining well-qualified professional foresters. For the past decade, there has been a tendency for the BIA to serve as an entry into federal employment; available positions are filled within the BIA when hiring freezes apply for other agencies only to have individuals transfer when positions in other federal agencies open up.

[3] Of individuals currently employed by the BIA, 49 professional foresters and 138 forestry technicians will be eligible for retirement by 1992. Within Trust operations of the BIA, 479 professionals will be eligible for retirement by 1992. Personal communication with BIA Chief Forester Marshall Cutsforth.

[4] Personal communication 5/31/89 with Greg Smith, Associate Director For Educational Programs, Society of American Foresters, from annual survey of accredited forestry schools on enrollment and degrees granted. In 1977-78 there were a total of 24,000 students enrolled in undergraduate and graduate programs in natural resource management; by 1987, enrollment had dropped to 13,600. Enrollment in forestry programs dropped from 10,500 in 1977-78 to 4,600 in 1987. Less than 1/2% of enrolled students were of Native American heritage.

Sustained yield must be integrated with other obligations stemming from the trust responsibility, such as: protection of forest from damage by wildfire, insects, or disease and promotion of industry so that Indian people can benefit from the stumpage value, employment and profit to be gained from their forest resources. These concepts were formally embodied in General Forest Regulations of April 23, 1936, more than a half-century ago.

Self-Determination:

The most significant development in the management of Indian forest resources within the last decade has been the emergence of self-determination, the right of Indians to make their own choices and decisions. Self-determination is beginning to become a reality as tribes choose to undertake increasing responsibility for managing their own affairs[5].

Under PL 93-638 and the recently enacted amendments in PL 100-472, forestry functions are contractible. Tribal forestry organizations are evolving on a number of timbered reservations. By 1987, tribal forestry organizations had been established at 31 locations; approximately 30% of the total Indian forestry program (including administrative deductions) is contracted to tribes. At twelve locations, the entire BIA forestry program has been contracted under the Self-Determination and Educational Assistance Act (PL 93-638). A total of approximately 250 people are employed by Tribal forestry organizations (not counting individuals subcontracted to perform particular services like tree planting or thinning), including 58 professional foresters.[6]

---

[5] Increasing Indian involvement has been evident at both the tribal and inter-tribal levels. In the late 1970's, the Intertribal Timber Council was formed to facilitate discussion of common problems and promote cooperative working relationships with the BIA. The Council has convened annual symposiums in an attempt to foster enlightened discussion and joint development of recommended solutions. Although acceptable solutions have not always been reached, substantial progress has been made.

[6] BIA Forestry Program Funding and Position Analysis FY 1987, May 1988. Tribes have been confronted with difficulties in recruiting and retaining well-qualified personnel for their programs due to three primary reasons. First, the funds available to support tribal staff frequently are derived from administrative deductions on timber sales revenues. Given the instability in the timber market in recent years, funds have frequently been inadequate to maintain the tribal forestry operation. Second, delays in the federal appropriations process, coupled with contracting procedures employed by BIA administrative authorities, have often forced tribes to program their operations in response to funding levels provided for in appropriations requested by the Administration. The availability of funding for contracting of forestry operations is uncertan and unstable. Under these circumstances, it has been extremely difficult for tribes to maintain any semblance of continuity for their staff. Third, in general, the personnel policies of tribes are not well-developed, benefits such as retirement programs and insurance packages often fail to be competitive.

Tribal forestry organizations have emerged not only in response to desires of Indian tribes to have greater control over their own resources, but also because the BIA's management has not been totally satisfactory. Some Tribes have established their own forestry programs to fill voids, correct deficiencies in BIA management, or to obtain access to necessary expertise where confidence in the BIA has been eroded.

Tribes often must contract to perform forestry operations for substantially less than the funds available to the BIA because the BIA holds back some resources to retain staff under the rationale that the trust responsibility can be retained only through the continued presence of BIA personnel. Impacts of the recently enacted amendments to the Self-Determination Act upon BIA oversight staffing requirements cannot be assessed until implementing regulations are established.

An additional problem confronting tribal forestry organizations that rely upon contracting is the difficulty in maintaining continuity of staff. Administrative decisions in the BIA's contracting mechanisms still appear to be operate under the "Buy Indian" mentality; tribal organizations that depend upon contracts are often treated as expendable conveniences rather than permanent institutions established in response to self-determination.

Tribes have frequently been forced to develop contracts for just a portion of the year until Congressional appropriations and administrative distributions have been completed. In sum, self-determination is often frustrated by cumbersome contracting procedures and budgeting and fiscal accounting processes employed within the BIA.

The Significance of Indian Forest Resources:

Forest resources play a significant role in the economies of approximately 100 Indian reservations located in 23 states. Collectively, Indian people own approximately 15.1 million acres of forest land, including 5.7 million acres of commercial forest and 4.5 million acres of commercial woodlands. There are an additional 7.5 million acres of forest lands in Alaska obtained under the Alaska Native Claims Settlement Act of 1971.

In 1988, income from the sale of Indian timber from commercial forest lands exceeded $72 million, providing sorely-needed resources to support tribal communities and a critical source of capital for social and economic development. In 1986, income from the sale of forest products and personal use value generated from woodland resources exceeded $38.9 million[7]. Indian forests supported some 12,000 person years of employment and generated over $270 million in personal income in 1986.[8]

Despite, these significant contributions, Indian people are receiving only a fraction of the potential benefits attainable from their forest resources.

The Inability of the BIA To Provide State-Of-The Art Management Services

Adequate financial resources to fully develop the potential of Indian forest resources have never been made available by the United States. Deficiencies in Indian forest management have long been recognized.

Indian forest resources have not been and are not now being managed in accordance with the state-of-the-art in forestry. Indian forest management has never received adequate funding, or even funding comparable to that authorized for other public agencies. Funds appropriated per acre of Indian forest lands have always been substantially less than those received for other federally managed forests, but the methods used and the objectives sought in the protection, timber-sale administration, and development have been substantially the same.

In 1984, former BIA Chief Forester George Smith compared federal expenditures for forest development (intensive forest management activities) on Indian lands with those on other federally-owned or administered forest lands and on privately owned forest lands[9]:

	$ Expended Per Acre of Commercial Forest Land (1981)	
	Amount	% Of BIA
Bureau of Indian Affairs	$1.67	100
U.S. Forest Service	$2.34	140
Bureau of Land Management	$7.39	443
Industrial Forestry Assoc (WA,OR,CA)	$5.47	328

Underfunding for management of Indian forest resources has resulted in: (1) impaired development of physical improvements necessary for forest protection; (2) a staffing level inadequate to perform even the limited functions of timber sales administration; (3)

---

[7] Native American Woodland Resources: A National Overview, U.S. Department of Interior, Bureau of Indian Affairs, June 1988.

[8] A Survey of Annual Economic Benefits Derived From Indian Forest Resources, U.S. Department of Interior, Bureau of Indian Affairs Division of Forestry, June 1988. and R.W. Miller, 1986. Native American Forestry, Journal of Forestry 84(10):22-31.

[9] "Information and Data Regarding the Indian Forest Resource and Requirements For More Intensive Management", In Proceedings of the Eighth Annual National Indian Timber Symposium, page 126.

reduced investment in management planning and decreased forest productivity; and (4) substantial losses in potential income and employment benefits attainable from more productive utilization of Indian forest resources.

Throughout its 80 year history, the Indian forestry program has been seriously undermanned and underfinanced for management and development[10]. In a 1940 Department of Interior report "Forestry on Indian Lands", the BIA stated:

> *"The administration and protection of the Indian forest and range lands has been seriously handicapped from the beginning because of insufficient funds...In fact, Section 6 of the Act of June 18, 1934 (48 Stat 984) directs the Secretary of the Interior to manage forest and range lands on Indian reservations coming within the purview of this act on a sustained-yield basis. To accomplish these necessary objectives, however, requires a high degree of intensive management which can only be accomplished by a substantial increase in the annual appropriations made available for forestry work on Indian reservations."*

These sentiments were echoed by BIA Chief Forester George Smith in a 1980 update to the 1940 report:

> *"In the beginning little was known as to the extent and character of the Indian forests and almost nothing had been done to inventory the property or to develop road, trail, telephone or lookout systems within the areas. Not only were these improvements immediately necessary to proper forest protection but a timber-sale procedure had to be worked out, conservative cutting practices devised, and an efficient timber sale organization developed. These and many other tasks had to be accomplished as rapidly as possible on a pitifully inadequate budget and with a regular forestry staff which until the 1960's never exceeded 200 men."*[11]

The history of appropriations for the BIA forestry program reveals that significant increases in staffing and funding have come only within the last decade. Problems with inadequate Congressionally-authorized funding for Indian forestry were alleviated somewhat in 1972 when a determination was made that administrative deductions collected to help cover the costs of timber sale supervision could be used to reimburse Indian owners for funds invested in management of their forest properties. Since that time, these deductions have increased the funds available to Indian forestry by some $5 to $14.9 million annually (30%-50%), depending on stumpage income, and has become the major source of support for tribal forestry programs. An additional benefit of this program is the increased interest and involvement of tribal governments in forestry matters through their own internal appropriations processes. Under the previous administration, however, the continued availability of even these tribal contributions to forest management was threatened with elimination during agency budgeting processes[12].

---

[10] In his report "The Indian Forests", H.B. Steer, who served as Supervisor of Forests for the Taholah Agency on the Quinault Reservation during the 1920's, wrote "The Indian Service as a whole, and the Forestry Branch in particular, has been undermanned and underfinanced since inception... the Forestry Branch has never had sufficient funds for personnel, equipment, fire prevention and suppression, timber sale administration, and all other kinds of forestry work." p. 619. Early years of the Indian Forestry program were plagued by problems of low pay grade levels and slow promotions; compensation for comparable work was usually below levels received in other federal agencies. Steer, who had received $3400 for his position in the Indian Service while a comparable Forest Service position paid $4600, left the Indian Service to join the Forest Service (Newell, A.S., R.L. Clow, and R.N. Ellis, 1986. A Forest in Trust: Three Quarters of A Century of Indian Forestry 1910-1986, p. 3-6). Problems in securing well-qualified, adequately compensated professionals for Indian forests were also highlighted in the 1928 Meriam Report.

[11] Smith, G.E. (1980), History and Overview of the Indian Forestry Program, U.S. Department of Interior.

In FY 76, the total BIA forestry appropriation for forest management was $15 million. In FY 77, a $5.5 million forest development add-on was received to help correct backlogs in reforestation and other management activities that had developed during the preceding decades. In FY 78, Congress appropriated an additional $6.6 million and authorized 262 new forestry positions[13] (compared to a total of 350 in FY 77) to help correct deficiencies in timber sales administration. Beginning in FY 85, Congress has appropriated approximately $1.2 million annually to begin addressing deficiencies in forest inventory and management planning.

However, these apparent increases in funding levels are somewhat misleading. They fail to reflect changes in management responsibilities, including providing services for: (a) 8.3 million acres of Indian woodlands in 1987; (b) approximately 70,000 acres of newly acquired or restored commercial forest lands over the last decade; (c) meeting new requirements of federal laws such as the National Historic Preservation, National Environmental Policy, and Endangered Species Acts; and (d) meeting increasing demands for Integrated Management Planning and Enterprise Development - all of which have been added without commensurate increases in funding levels. Inflation has reduced the actual purchasing power of appropriated for forestry activities by more than 20% below 1978 levels. Further, appropriated funds available to the tribes and for field operations are being reduced by such factors as increases in pay costs and administrative expenses.

Serious deficiencies in funding levels continue to persist. Impacts upon Indian forest resources and their owners are most unfortunate. The responses from the Blackfeet and Flathead forestry agencies and Central Office to the 1987-89 Needs Assessment Survey conducted by the Bureau of Indian Affairs illustrate the consequences of inadequate funding levels currently available for management of Indian forests.

---

[12] Long-standing problems of underfunding and understaffing have been exacerbated by the initiatives of the previous Administration and the previous Assistant Secretary of Indian Affairs. For the past few years, the previous Administration, without tribal consultation, has come before the Congress with budget requests that would decimate the forestry program and eliminate the availability of administrative deductions as a major source of investment and support for tribal forestry operations. I suspect that the strategy can at least partially be explained by budget games in recognition of the political success of tribes before Congressional Appropriations Committees, but the substantial sums of scarce financial resources which tribes have been forced to expend to defeat these ill-advised initiatives could be far better used in other ways.

[13] The number of FTE positions was subsequently reduced from 262 to 246 FTE by an administrative decision by the Assistant Secretary of Indian Affairs.

Blackfeet Reservation:

- *Fulfill 40 percent of Tribal timber trust responsibility*
- *Provide 30% of potential timber revenues to the tribe from stumpage and harvest 50% of the annual allowable cut (AAC)*
- *No forest improvement or wildlife development programs*
- *Planning limited to timber sales preparation*
- *Inventories limited to those required for timber sales*
- *70% of required timber trespass protection on 50% of commercial timber lands*
- *Insect and disease control limited to practices done in conjunction with timber sales*
- *Forest development planning limited to new harvest sites*
- *No development training of forestry technicians/aids*
- *No involvement in employment training opportunities*
- *No work done on markets and forest enterprise development*

Flathead Reservation:

- *Unable to conduct stand examinations for management planning*
- *Unable to remeasure and evaluate established growth studies*
- *Unable to conduct inventory analysis and calculation of AAC*
- *Unable to carry out program of prescription burning and fuels inventory*
- *Unable to harvest 44% of AAC*
- *Unable to participate adequately in Geographic Information System and Integrated Resource Management Planning efforts*
- *Unable to maintain roads or prepare transportation plan*

Central Office:

- *Inability to provide sufficient technical assistance in Forest Management Inventory and Planning, GIS, and Woodland Management to reduce existing deficiencies in a timely manner, and to provide the capability for the Forestry Program to fulfill its part in the overall achievement of integrated management planning.*
- *Unable to provide adequate administration of expanding forest protection activity.*
- *Unable to provide requested level of assistance in economic development.*

The 1987-89 Needs Assessment

In 1987-89, the BIA Division of Forestry surveyed its various area and agency offices to identify staffing and funding needs to correct deficiencies in the Indian forestry program and provide state-of-the-art services[14]. Tabulation of responses to the survey indicated a need for 507 Full Time Equivalent (FTE) positions and over $26 million dollars (exclusive of any needs associated with the management of Indian forest lands in Alaska). Survey responses represent minimum requirements identified by the BIA (with tribal consultation at the local level) as being necessary to fulfill its trust responsibility, correct recognized deficiencies, and provide its concept of state-of-the-art management for Indian forest resources.

The identified FTE need was comprised of 198 professional foresters, 249 technicians, and 60 support personnel. After allowing for filling of existing vacancies (124 positions were unfunded as of the end of FY 87), approximately 380 new positions would be required.

Identified needs are summarized in Table 1. The significance of these shortfalls, in terms of both immediate losses to the beneficiaries of the trust and potential benefits to be gained by providing necessary funding, are briefly discussed below.

Inventory and Management Planning

Completion of the management planning process is essential in order to meet overall resource management program objectives, comply with environmental laws, and fulfill trust responsibilities. Inventory information is required to determine the productive capacity of Indian forests and identify management needs. With the completion and implementation of current management plans, yields at or near the AAC can be more efficiently realized and sustained.

Substantial progress on forest inventory and management planning has been made in recent years. However, as of September 30 1988, current management plans existed for only 59% of class 1 reservations and 24% of class 2 reservations[15]. Since FY 85, the Congress has annually appropriated additional funds to address continuing deficiencies in forest inventory and management planning.

---

[14] Addendum to the FY 1987 Forestry Program Funding and Position Analysis, U.S. Department of Interior, Bureau of Indian Affairs Division of Forestry, February 1989.

[15] Class 1 = at least 10,000 acres of commercial forest land or an annual allowable cut of 1 million board feet or determined by the BIA Area Office to be of major commercial value; Class 2 = less than 10,000 acres of commercial forest land and an annual allowable cut of less than 1 million board feet, but possessing a commercially viable timber resource determined by the BIA Area Office to be of moderate commercial value; Class 3 = Timbered reservation not requiring a forest plan comprised of an identifiable timbered area of any size which is considered by the BIA Area Office to have insignificant, current commercial timber value. Status of Forest Management Inventories and Planning For FY 1988. Bureau of Indian Affairs, September 30, 1988.

Statistics reported by the BIA indicate that the AAC from Indian lands has remained remarkably stable over at least the last two decades. This is quite surprising in light of substantial changes in merchantability standards, adjustments to the forest land base, the replacement of decadent old-growth forests by young, vigorous stands, activities like reforestation and timber-stand improvement which are designed to increase the growing stock, and greater emphasis on more accurate inventories and more formal management plans that has resulted in significant changes to the AAC on particular reservations. The stability in AAC levels affirms continuing deficiencies in staffing and resources for timber sale administration, management analysis, and investment in inproving forest productivity.

Determination of Optimal Stocking Levels:

Analysis of inventory data and field experiments provide information to develop management prescriptions which are appropriate for particular forest conditions. Knowledge of optimum stocking levels on a multitude of sites and forest types is required to capitalize on the full growth potential of the forest resource. Potential gains attainable from stocking control have been demonstrated through field trials at some locations. For example, in a 1984 paper [16], Robert W. Miller, Assistant Chief, BIA Division of Forestry, illustrated that an increase of 17.2% could be achieved in Ponderosa Pine-Douglas Fir type stands under stand-specific intensive management measures to control stocking levels and residual tree spacing.

Application of Computer Technology:

BIA forestry operations lack coordinated effort to train forestry personnel in the use of new equipment and do not have adequate technical staff to take on the increased workloads. The BIA lags behind both private industry and other government agencies in the application of computer technology to the management of forest resources. Boise Cascade claimed to have raised the allowable cut in its northwest region by 35% through the application of computer technology[17]. Whether or not the BIA and tribes would be able to achieve comparable improvements through the use of computers is certainly an intriguing question. At a minimum, the use of computers can increase capabilities to evaluate alternative strategies, perform economic analyses, and schedule timber harvests more efficiently.

---

[16] Miller, R.W. (1984). "Increased Investment in Indian Forests Means Increases In Yield and Economic Return", In Proceedings of the Eighth Annual National Indian Timber Symposium.

[17] Miller, Ibid.

Forest Development

Thinning:

Forest lands which are over-stocked and have sub optimal spacing have decreased growth rates and increased potentials for loss due to wildfire, insects, and disease. The current level of appropriations for forest development activities is insufficient to completely treat several thousand acres of Indian forest land in need of thinning.

The potential to obtain substantial increases in forest production through thinning activities has been demonstrated on several Indian forests. For example, thinned stands on inventory plots on the Flathead Reservation produced gains of 22.6% in basal area, 42.2% in board foot volume, and 34.8% in cubic foot volume over unthinned stands. Similarly on Yakima, growth increases of 13.1%, 16.7%, and 8.4% in basal area, board foot volume, and cubic foot volume, respectively were reported for thinned stands compared with unthinned stands[18].

Tree Improvement:

Adequate resources are not available to fully pursue development of genetically superior tree stock for plantations on Indian forest lands. Research in this area is being conducted on a limited basis at a few locations, including Warm Springs and Quinault.

Regional and international research has demonstrated that 10-20% increases in yield over the first generation of selective parent forest species breeding can be achieved. Through subsequent generations, additional increases are likely possible. Some segments of private industry have programmed a 20-30% gain in productivity by practicing tree improvement through the second generation[19].

Forest Protection:

Wildfire:

There is a widespread need for acquisition of adequate fire suppression equipment on Indian forest lands. Much of the equipment utilized for fire protection activities has been declared surplus by other federal agencies, is in poor, and many cases, unsafe, operating condition, requires high maintenance costs and is inefficient.

Unsafe and inefficient equipment must be replaced with state-of-the-art technology according to an orderly replacement schedule and equipment needs to be standardized within each region to permit effective attack capacity. A total capitalized fire equipment need of $6.5 million[20] has been identified for a three year period (three years would likely be required due to the BIA's fiscal management procedures).

---

[18] Miller, Ibid.

[19] Miller, Ibid.

Continued deficiencies in initial attack capabilities and timeliness of fire suppression actions will result in increased wildfire losses. Income and other amenities flowing from forest resources will be lost and gains in forest productivity resulting from intensive management investments may be jeopardized[21].

Insects and Disease:

An Integrated Pest Management approach to protect Indian-owned forests from destructive pests has been adopted by the BIA as a matter of policy. However, the intensive forest management required to treat the underlying causes of pest buildups to prevent outbreaks can only be practiced on a small area during the next 2-3 decades. Managers of Indian forests are currently unable to significantly alleviate or prevent losses through insects and disease loss through detection programs and implementation of management practices such as stocking control and sanitation. With insufficient funding for this activity, control actions are largely limited to direct suppression of outbreaks and other activities that can be performed in conjunction with timber sales.

Requests for funds to control insects and disease are submitted through the U.S. Forest Service, the agency responsible for administration of the national program for forest pest management under the authority of the Cooperative Forestry Assistance Act of 1978 (PL 95-313). Congressionally appropriated funds for this activity have not been sufficient to meet identified federal, state and private sector needs. During the ten year period 1979-88, the BIA requested approximately $8.3 million dollars for suppression of insects and disease on Indian lands, but received only $4.8 million (58% of the request)[22]. The inadequacy of funds for forest disease and pest control on Indian lands sets up a vicious cycle: without adequate resources to develop sound sivicultural prescriptions for control and suppression, chances of obtaining forest pest management funds administered by the Forest Service are decreased.

---

[20] Personal communication Chuck Tandy, BIA, Boise Interagency Fire Center 5/23/89.

[21] For example, on the Northern Cheyenne Reservation, approximately 7100 acres of precommercially thinned lands have been lost to wildfire since 1980. This loss represents some 25%-30% of the total investment in precommercial thinning activity on this reservation. The estimated cost of precommercial thinning of $118.65 per acre produces an immediate loss of over $847,000 in expenses alone; additional losses result from the lost time invested in the established stand, decreases in future yield, and costs of reforestation.

[22] Briefing Book on Indian Forestry Program, February 1988, p 7.

Losses to insects and disease can be high[23]. For instance, 40% of the Ute Tribe's forest is being lost to the Mountain pine beetle and losses are expected to increase to 70-80% of the forested resource. Other areas are being impacted by a number of agents, including mistletoe infection, root rot, and Tussock moths. Failure to effectively manage insects and disease on Indian forests results in substantial and in many cases avoidable losses to Indian people and owners of neighboring lands.

Trespass:

Another area of forest protection involves trespass and prevention of theft of Indian property. This activity involves cadastral surveys to determine ownership, field examinations, damage appraisal, apprehension, preparation of reports, assisting in investigations, writing demand letters, and preparing depositions. Forest trespass problems are common in virtually all areas and are particularly severe where individual allotments are involved. Inadequate staff are available to provide necessary patrol and enforcement against trespass; further, the legal means for handling trespass cases involving Indian forest resources are woefully deficient.

Timber Sale Administration:

Failure to Harvest The Full AAC:

Respondents to the Needs Survey indicated that the largest need for both personnel and funding concerns timber sale administration. Over the past several years, there has been a chronic failure to fully harvest the full AAC from Indian forest lands. Since 1970, the actual harvest from Indian forests has ranged from 51% to 92% of a total AAC of approximately 1.03 billion board feet[24].

The failure to sell the Indian timber that is available for harvest on a sustained yield basis is due to several reasons, including:

1. Inadequate funding and staffing within the BIA Division of Forestry. These shortfalls have resulted not only from inadequate funding from the Congress, but also from increased administrative burdens imposed upon the BIA as the result of legislation regarding the National Historic Preservation, National Environmental Protection, and Endangered Species Acts.

---

[23] Miller (Ibid) reported that annual losses from forest pests are estimated to be 2 to 2.5 times that lost to wildfire.

[24] Annual Timber Harvest vs. Allowable Annual Cut, BIA, May 9, 1989.

a. Timber Sales Administration - it was not until FY 78, that the Congress recognized and acted to correct deficiencies in the BIA's timber sale administration staffing levels.

b. National Historic Preservation Act (NHPA). Major forestry management actions, including timber sales, are precluded until NHPA clearance is obtained. The lack of resources to complete archeological surveys has been a major problem.

c. National Environmental Policy Act and Endangered Species Act. These pieces of legislation imposed new requirements upon the BIA without compensatory funding. Concerns for impacts upon endangered or threatened species and environmental analyses must be incorporated into plans prior to major actions affecting forest properties.

2. Market Conditions. Poor timber markets have caused some tribes to withhold timber in recent years. Problems have been aggravated by competition from Canadian imports (which now account for over one quarter of the forest products sold in the United States), relative currency exchange rates, and interest costs.

Regardless of the underlying reasons, since 1970 a total of over 4.8 billion board feet of timber has not been harvested, resulting in a potential income loss to Indian people of over $417 million dollars. In 1988 alone, the inability to harvest the full AAC resulted in a loss of over $29 million in stumpage income from Indian lands.[25]

These immediate reductions in potential stumpage income resulting from the failure to harvest the full AAC, however, do not reflect the total extent of the loss to Indian people. On many reservations, forests are overmature; harvest is required to replace slow-growing or decadent stands with a regulated, more vigorous stand. Miller (Ibid) estimated that managed stands produce an average future net board foot per acre per year growth increase of 57% over current levels. The capability to fully harvest the AAC and adjust stocking levels to optimize future growth has a very substantial effect upon future forest productivity and yield.

Inability To Respond to Market Opportunities:

The inability of the BIA to provide adequate staffing for timber sale administration also impedes the ability of tribes to take advantage of favorable market conditions. Tribes may elect to withhold timber from the market when prices are low during poor markets, but are unable to sell their timber when markets are high. The opportunities caused by current timber shortages resulting from the controversy over the northern spotted owl in the Pacific Northwest is a case in point. Over the last decade, substantial quantities of harvestable Indian timber have not been removed and are potentially available for market. However, the BIA lacks the required capacity for timber sales administration to process the sales to increase timber supplies and benefit Indian land owners.

---

[25] Annual Timber Harvest vs. Allowable Annual Cut, BIA, May 9, 1989.

Forest Permits:

The forests are vital to traditional Indian cultural values; they provide places for religious ceremonies, for gathering native medicines and foods, and for obtaining raw materials for transportation, household goods, shelter, and artistic expression. Firewood, berries, mosses, pinyon nuts, acorns, syrups, herbs, and wild rice are valuable forest products for personal consumption and sale whose values on some reservations easily exceed the income received from the sale of timber.

Utilization of these resources can be extremely sensitive, both from a social and management perspective. While there may be some reluctance to regulate the harvest of some of traditional use minor forest products, without adequate control, resources can be severely damaged. There is a need to evaluate the adequacy of existing regulations and procedures concerning the removal of minor forest products.

The use of permits could increase the supply of forest products to small, local businesses, cost-effectively remove small pockets of commercial timber, and provide opportunities for development of small-scale Indian enterprises.

Much of the activity concerning removal of these products occurs without permits or controls. This creates a situation where the property owner receives little or no benefit from resource extraction. Adequate resources are not available to properly manage permit activity or protect impacted resources.

Indian Enterprise Development:

At many locations, Indian timber continues to serve as a major source of supply to help support non-Indian economies. The practice of exporting Indian resources to support off-reservation non-Indian businesses is changing in favor of increased utilization in Indian-owned enterprises.

Tribes are striving to increase benefits from their forest resources and assume greater control of their development and management. An increasingly important trend is the development of small enterprises that concentrate on specialty items, often utilizing minor forest products instead of timber. Indian timber now feeds at least seven major tribal mills as well as many smaller tribal and individually-operated enterprises, among them post and pole plants, cedar shake mills, chip plants, small sawlog mills, log yards, firewood operations, and ornamental brush picking. In total, 40% of the annual Indian timber harvest volume is processed in tribal enterprises.

Survey results indicated a need for 22 FTE positions and approximately $1.3 million annually to provide technical assistance to Indian people in developing timber enterprises. Most of the identified needs related to improving marketing of Indian timber and forest products. The Intertribal Timber Council and BIA recently completed a Marketing Study which identified several opportunities for the development of viable Indian business enterprises. Since others on this panel will discuss the findings and opportunities identified by this study, I will not address this area further in my testimony.

Geographic Information System (GIS):

Indian forests are more than a source of income and employment. The production of timber and other forest products is important, but not all-encompassing. The forests are integral to Indian cultures and life styles. Grazing, watershed, wildlife and fishery habitat, recreation and aesthetics are other important considerations that affect the economic and social well-being of reservation residents and local communities. Indian forests are multiple-use forests in the fullest sense.

Tribal interest in obtaining the tools necessary to complete and utilize Integrated Resource Management Planning (IRMP) has increased substantially in recent years. Not only can GIS and IRMP result in improved resource management decisions to protect environmentally or culturally sensitive areas and increase values of commercial forest properties, it can also be of value in identifying and maintaining recreational business development opportunities which depend upon wildlife, fisheries, and other resources.

Archaeology:

The National Historic Preservation Act (NHPA) of 1966 requires archaeological surveys and prior clearances for impacts upon sites of potential historical significance. The NHPA is administered by State Historic Preservation Officers. Wide variation in guidelines for clearance between states increases the difficulty of developing a consistent, nation-wide policy for Indian forestry.

Major forestry management actions, including timber sales, cannot be undertaken until NHPA clearance is obtained. In some areas, the inability to secure archaeological clearances has brought timber sales to a standstill. Survey responses indicated that the inability to obtain timely archaeological surveys is a widespread problem which impairs the ability to harvest the AAC. Respondents identified a need for approximately 21 FTE positions and $1.3 million annually to comply with NHPA requirements[26].

NHPA is a source of substantial friction between BIA forestry, Department of Interior, and tribes. Administration officials are attempting to ensure that the law is carried out, but tribes are concerned about the cost of surveys, impacts of delayed sales upon income, and the potential for increased vandalism following the identification of culturally sensitive sites.

Roads:

Nearly 9,000 miles of forest roads on Indian lands must be maintained and improved for continuing management access. This road network was initially developed under timber harvesting operations with no means for periodic maintenance. Survey responses indicated a large unmet need for road maintenance (31 FTE and $4.2 million annually).

Maintenance of an adequate road system is necessary to: (1) provide access for forest management activities; (2) reduce loss from wildfire, insects, and disease; (3) transportation of forest products; (4) access for traditional and multiple use; and (5) efficiency in timber sales administration.

Woodlands:

There are approximately 8.3 million acres of Indian owned woodland.[27] In some locations in the southwest, wood remains the primary source of fuel for heating and cooking. Forest products such as nuts, berries, herbs, ornamentals, Christmas trees, and charcoal comprise significant sources of income and personal use value.

Until recently, the economic significance of these lands, for both commercial and personal use, was largely overlooked. On August 10, 1987, the Assistant Secretary for Indian Affairs placed the administrative responsibility for woodlands management within the Division of Forestry. Prior to that time, forest product values from resources on these lands were viewed as being minimal. Changing market conditions and increasing demands for personal use of woodland resources have resulted in a clear need for more active management.

Results of the Needs Assessment Survey indicated that 42 FTE and $2.5 million annually are required for management of Indian woodlands. Failure to provide adequate resources for this function will result in dire consequences, as exemplified by the survey response of the San Carlos Agency and Albuquerque Area Office:

---

[26] Requirements to provide archaeological assessments apparently stem from an interpretation that the participation by BIA officials in approving forest management activities constitutes a federal action. Tribal governments possess inherent powers of sovereignty. If tribal laws and regulations pertaining to historic preservation are enacted on their reservations, it may be possible to overcome problems pertaining to administration of the NHPA.

[27] There are 4.5 million acres of commercial woodland distributed over 103 Indian properties according to the FY 1989 Status of Inventories Report.

> *If the San Carlos Agency is not supplied funding and FTE for woodland management, this program will continue as is, and the Reservation woodland resource will continue to be abused and deteriorate. Currently, adequate funds and staffing are not available to do anything other than issue permits. Silviculture is not being applied to the woodlands at San Carlos, resulting in depletion and high-grading of the resource. Sale administration and monitoring of cutters is impossible as well (due to lack of funding and FTE). This situation has resulted in little or no control over when, where, and how the resource is utilized. Wood cutting regulations have been passed by the Tribal Council but they can not be enforced due to lack of personnel and funds. The demand for woodland resources has increased fourfold at San Carlos over the past four years, and is expected to continue to increase. The future is bleak for the San Carlos woodland resource if funding and staffing remain as is. (San Carlos)*
>
> *Without a coordinated effort in woodlands, chaos will reign and the resource will suffer. We only have to look at "economic management" and early day development of commercial forest lands and subsequent mismanagement on (sic) suits and the forest development backlog acreages nationwide to understand the need for planned, coordinated development. (Albuquerque)*

Additional Information Needs

At the very least, results of the Needs Assessment reveal that there are several major areas in which the trustee believes that it is incapable of providing state-of-the-art services in the management of Indian forest resources. However, while these results provide useful indications of management problems, it is my belief that additional information is required to determine the status of and establish the future direction for the Indian forestry program. An independent, objective, nation-wide evaluation is essential to identify strengths and weaknesses, develop alternative approaches for correcting deficiencies, and establish a systematic plan to enable Indian people to receive the full benefits attainable from state-of-the-art management of their forest resources.

Such a study should:

1. Compare the current level of management on Indian forest lands with the state-of-the-art. The 1987-89 BIA Needs Assessment suffers from the lack of objective and consistent standards for comparison, particularly at the agency level;

2. Assess the adequacy of personnel responsible for Indian forest management in terms of staffing levels and qualifications;

3. Evaluate the performance of timber sales administration;

4. Assess current and potential economic benefits attainable from the utilization of Indian forest products; and

5. Review the BIAM and regulations to determine if procedures can be streamlined and the administrative paperwork burden alleviated while still protecting the trust responsibility.

Summary

The recently completed Needs Assessment brings both bad news and good news.

The bad news is that serious deficiencies in the management of Indian forest resources are evident.

- Since 1975, from $12 million to $39 million in stumpage income has been lost annually from the failure to fully harvest the allowable cut from Indian lands.
- Substantial losses are accruing from the inability to effectively contend with losses from wildfire, insects, disease, and trespass.
- Prospects for increased future yields from Indian forests are diminishing due to the inability to establish fully regulated forests, plan silvicultural treatments, and institute intensive management practices.
- Progress on Integrated Resource Management Planning is slow.
- The condition of Indian woodland resources is deteriorating.
- Reservation road systems are deteriorating, resulting in increased costs of management and removal of forest products.
- Indian enterprise development is lagging while unemployment rates on Indian reservations soar.

The good news is that something can be done about these problems. There are encouraging signs. Over the course of the last two decades, Congress has provided significant increases in the personnel and funds available to manage Indian forest resources. Indian tribes are becoming more informed and more actively involved in determining how their forest resources are being utilized. And the BIA has initiated efforts to identify management deficiencies.

Under a program of state-of-the art management, an increase of up to 33% of the allowable cut from commercial forest lands can realistically be achieved within four decades. A 340 million board feet increase in the production of Indian timber would have an estimated stumpage value of over $100 million, support over 5,400 new jobs, and produce over $84 million in personal income[28]. Add to these conservative estimates, the potential contributions from tree improvement programs, stocking control measures, application of computer technology, increased efficiency in the utilization of wood products, and intensive management of woodlands, development of viable Indian business enterprises, improved management of fisheries, wildlife and recreational resources. The prospects are staggering.

---

[28] Miller, Ibid.

It's a beautiful vision. And it's one that can become reality. We only have to find the way to get there from here.

Table 1. Summary of Results For 1987-89 BIA Forestry Needs Assessment Survey

	FTE REQUIREMENTS				FUNDING NEEDS ($M)		
MANAGEMENT AREA	Prof	Tech	Suppt	Total	Personnel	Support	Total
Forest Inventory and Planning	34.0	20.2	5.1	59.3	1668.7	1205.2	2873.
Forest Development	22.3	40.6	6.7	69.6	1590.6	2491.3	4081.
Forest Protection	15.3	16.0	8.5	39.8	1080.1	640.9	1720.
Timber Sale Administration	50.6	91.7	23.4	165.7	4342.7	1614.2	5956.
Forest Products Permits	5.4	16.7	1.4	23.5	503.3	69.2	572.
Indian Enterprise Development	13.8	4.9	3.2	21.9	630.0	696.5	1326.
Forestry Geographic Information System	17.4	12.0	3.8	33.2	895.0	588.2	1483.
Forest Archaeology	9.4	10.0	1.4	20.8	636.7	693.9	1336.
Road Maintenance	6.4	23.2	1.7	31.3	828.5	3410.0	4238.
Woodlands Management	23.7	13.2	5.1	42.0	1046.3	1453.7	2500.
TOTAL	198.3	248.5	60.3	507.1	13227.9	12863.1	26090.

TESTIMONY OF MARSHALL CUTSFORTH
CHIEF, DIVISION OF FORESTRY
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, SPECIAL COMMITTEE ON INVESTIGATIONS

JUNE 8, 1989

I. INTRODUCTION:

The Bureau of Indian Affairs Forestry Program formally began in June, 1910, with a Congressional appropriation of $100,000. A Division of Forestry within the Office of Indian Affairs was staffed with one Superintendent of Logging, two technically trained foresters, several "practical woodsmen and cruisers", and a number of temporary forest guards for wildfire protection. Supervision of logging activities and forest protection were the primary duties of these early day forest officers. In 1908 and 1909, U.S. Forest Service personnel provided forestry services, and prior to that, Indian Service personnel at some Agencies provided logging supervision.

During the next two and one-half decades, Indian Service forestry personnel continued to harvest timber and protect Indian forest lands under laws in existence at that time. The Act of June 18, 1934, Indian Reorganization Act (Wheeler-Howard Act) (Sec. 6, 48 Stat. 986; 25 U.S.C. 466), directed the Secretary of the Interior to make rules and regulations for the operation and management of Indian forestry units based on the principles of sustained yield management. While the Wheeler-Howard Act did not apply to reservations where it was not accepted, the Act of April 30, 1964, amended the Act of June 25, 1910, to include principles of sustained yield management or conversion of land to a more beneficial or desirable use on all trust or restricted lands. Thereafter, 25 CFR Part 163 has required the application of sustained yield principles to the management of all Indian forest lands. The provisions of these Acts are the principal guidelines for the protection and management of Indian forest lands today.

The Bureau Forestry Program has grown progressively since 1910, moving from sanitation/salvage type management (extensive) to intensive management, utilizing state-of-the-art forestry technology. Funding and staffing has also increased. The most significant increases occurred following intensive studies of the Indian Forestry Program in the early to mid-1970's. As a result of these studies, Congress increased the forestry appropriation in FY 1977, with a $5.0 million special forest development add-on and a $500,000 timber sale administration add-on. This was followed in FY 1978, with a $6.6 million timber sale administration add-on and 262 positions (subsequently reduced to 243 positions). No other increases were made until FY 1985, when a $1.2 million add-on was provided as the first year of a 12-year program to eliminate backlogs in forest management inventory and planning. Also, in FY 1985, the special forest development add-on was increased by $3.3 million (reduced to $3.15 million in subsequent fiscal years). In FY 1988, $238,000 was provided to assist tribes with forest products marketing/business development activities. This was increased to $338,000 in FY 1989.

In 1987, the Forestry Program consisted of 1,235 occupied positions, 484 of which were classified full-time permanent and the remainder temporary, seasonal, or other. In 1987, due to increased participation and interest, the tribal forestry program consisted of 631 occupied positions, 252 of which were full-time permanent and the remainder were seasonal. In Fiscal Years 1987 and 1988, the Forestry Program was supported by Congressional appropriations of $34.3 million and $33.3 million, respectively. The FY 1989 appropriation to date is $32.6 million.

FY 1987 statistics indicate the Bureau's responsibility for protection and management is extended to a total of 15.1 million acres of forest land, which is comprised of 5.7 million acres of commercial forest; 8.3 million acres of woodland (4.5 million acres of which is classified as commercial); 0.4 million acres of commercial forest withdrawn by tribal action; and 0.7 million acres of inaccessible forest. The biological/administrative allowable annual cut is 994 million board feet of which 885 million board feet is presently estimated to be marketable. The marketable cut fluctuates periodically depending on the lumber market and other factors.

In comparing the Indian commercial forest of today with that of yesterday, it is notable that the total growing stock in 1940 was 27.8 billion board feet while in 1989 the growing stock is 44.7 billion board feet, an increase of 162 percent during the fifty year period. Additionally, 37.2 billion board feet of timber was harvested, a volume equivalent to 83.2 percent of today's growing stock. Of course, this comparison is made recognizing there were differences in merchantability standards between then and now, as well as other differences including; commercial species, defect, and mortality. Also, because the allowable annual cut was never attained in any year during the entire period, there was an accumulation of growing stock volume due to the shortfall in annual harvest. Finally, the forest in 50 years has taken on a new look -- from one composed of large, well-spaced old-growth, trees to the second growth stands of today that have smaller diameter trunks but are faster growing, more vigorous and with a greater number of trees per acre.

Perhaps the most significant legislation since the Indian Reorganization Act is the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) which provides for Indian tribes to fully operate and manage programs and services previously conducted by the Federal Government. Public Law 93-638 has a profound affect on the manner in which the Federal Government interacts with Indian tribes to carry out its trust obligations in the management of Indian natural resources. The Indian Self-Determination and Education Assistance Act Amendments of 1988 (P.L.100-472) amended the 1975 Act to make it less cumbersome for tribes to contract and manage programs previously administered by the Federal Government. The implications of the 1988 Amendments have yet to be determined.

II. CHALLENGES - PAST 20 YEARS

During the years following June 1934, when sustained yield forest management principles became the statutory method for administering Indian forests, the Indian Forestry Program has been studied, analyzed and reviewed many times. Most of these critiques have included recommendations for program improvement. Five of these reviews have been chosen to illustrate common program characteristics identified in each, and the recommendations for their improvement.

The five major forestry program critiques were: (1) A Study of the Indian Forest Program, CH2M, October 1968; (2) Management of Indian Natural Resources, Comptroller General for Committee on Interior and Insular Affairs (Senator Jackson), November 1976; (3) American Indian Policy Review Commission, May 1977; (4) Administrative Fees in Indian Timber Management, Secretary of the Interior Task Force, September 1982; and (5) President's Commission on Reservation Economies, November 1984. The periods when these reviews were conducted cover a wide range of Federal/Indian relationship philosophies, varying degrees of program interest, and fluctuating Federal funding levels.

The Federal (BIA) response to the various recommendations follows. For brevity, only the recommendations that appear in two or more reviews are summarized in the BIA response. (Reviews are referred to by the Year in which prepared):

(1) The 1968, 1976 and 1977 recommendation to increase reforestation and timber stand improvement, eliminate the backlog of this work, and comply with forestry regulations objectives and Federal statute for sustained yield management is being addressed by BIA with the aid of Congress and the annually appropriated special forest development program initiated in FY 1977. The outputs of this very important and successful program are presented elsewhere in this testimony.

(2) The 1968, 1976 and 1977 recommendation to adequately fund and staff a forest management inventory and planning effort with the objective to increase timber production materialized when the forest management inventory and planning add-on was begun by Congress in FY 1985. Forest management conducted with the most current inventory information and in accordance with a formal management plan is the mode of operation at the major forested Indian reservations today. Refer to Current Program section for further details.

(3) Virtually all the forestry program reviews recommended economic development of the forest resource to gain value-added income through local processing and to create meaningful employment for Indians. Funds and staff are being provided for forest products marketing specialists to provide assistance to Indian entrepreneurs and enterprises in all aspects of forest products marketing. Refer to Current Program section for further details.

(4) The 1968, 1976 and 1977 recommendations regarding policy and use of administrative fees in Indian timber management stressed that a clear and consistent policy be established; not subject to arbitrary or unilateral interpretation. The 1982 Task Force recommendations for the Secretary of the Interior have been adopted for the most part. A Fiscal Year 1988 Budget initiative did propose to have the Secretary collect the fees to cover the costs of the Forestry Program at locations not paying their own way. Congress rejected this proposal out of hand.

III. CURRENT PROGRAM:

The function and role of the Forestry Program is to protect, manage and develop the forest resources of Indian trust property in partnership with Indian tribes and individual Indian land owners.

A. Office Operations:

1. Central Office Operations: The Central Office provides program administration, policy and oversight for the Bureau's forestry operations.

2. Area Office Operations: The Area Office provides for the execution of the forestry program through the planning and scheduling of Areawide forestry activities, and the exercise of program oversight to ensure that regulatory and policy requirements are followed and that technical standards of sound forest management are practiced.

3. Agency Office Operations: The Agency Office implements policy and supervises forestry operations.

B. PROGRAM SEGMENTS:

1. Forest Development:

a. Regular Forest Development is that segment of the forestry program which addresses the improvement of the forest resource. It involves reforestation and timber stand improvement activities principally, and consists of all the silvicultural treatments applied to bring a forest to commercial size and value; repeating the process in perpetuity under the principles of sustained yield forest management. This program has been funded through the Indian Priority System budgeting process, tribal direct funding and with funding from the administrative fee deduction program; and is conducted by Indian tribes, under contracting authorities.

b. Special Forest Development is that segment of the forest development program with the responsibility to eliminate the backlog of 1,006,705 deficient Indian commercial forest acres, identified in FY1977, that required some type of silvicultural treatment(s) to increase growth and yield to the full productive capacity of the forest environment. Approximately 494,000 acres have been treated.

The forest development program employed 860 people in Fiscal Year 1986. In addition, U.S. Forest Service Experiment Station research indicates that future yields from timber stands are increased 15 to 25 percent when activities, such as thinning dense stagnating stands or removing competing brush and other vegetation, are accomplished. With these funds, growth levels on Indian forests can be increased by 160 to 256 million board feet per year. This increased growth represents increased tribal revenue of over $17 million and increased employment revenue of over $51 million per year.

2. Forest Management Inventory and Planning: This program includes all the activities necessary to compile and maintain forest management plans for trust forested reservations or properties having a commercial forest land base. On January 1, 1988, approximately 40 of the 87 major forested reservations or properties had current forest management or operating plans. Of the commercial forested acreage, 93 percent have current inventories and 64 percent are under a current forest management plan. The remainder have operating plans.

3. Forest Products Marketing and Assistance: In 1987, the Intertribal Timber Council (ITC) recommended that the BIA provide assistance to facilitate wood product marketing and business activities in the domestic and international markets. The ITC had begun a Native American National Forest Products Marketing Study identifying forest product business development opportunities for tribes. The ITC recognized that most tribes would not, in the near-term, have the marketing expertise to exploit opportunities identified in the study. To solve this problem, the ITC additionally requested the BIA to assist interested tribal representatives in acquiring marketing experience, thus ensuring a greater role by Indians in the future marketing of their forest products.

In response to the ITC recommendations, marketing specialists positions were established in the Portland, Phoenix, and Minneapolis Area Offices, and in the Central Office. Two of the Area positions, Portland and Minneapolis, and the Central Office position have been filled. The Phoenix position will be selected shortly. In FY 1989, Congress appropriated $336,000 for the forest products marketing program.

Although the forest products marketing program operates with limited funds and staff, it nevertheless provides valuable assistance to Indian tribes. Domestically, BIA marketing specialists have provided assistance in identifying and developing market study initiatives, new markets, and modernizing/expanding Indian-owned forest business enterprises. Currently, over 33% of all timber harvested from Indian lands is processed through Indian owned mills. In Addition, a large amount of the remaining volume of harvested timber is brokeraged through tribally owned enterprises. As more tribes recognize and begin to exploit their business opportunities, we expect an ever-growing number of requests for forest product marketing assistance.

BIA marketing expertise has assisted in the development of foreign markets, particularly in the Pacific Rim Area (i.e., Japan, Taiwan, Korea, China, and Micronesia). In cooperation with the ITC and the tribes, the BIA has participated in two timber and wood products trade missions to the Federated States of Micronesia and the People's Republic of China. At least one business development venture is now under serious consideration as a result of these trade missions.

4. Fire Management Program:

a. Fire suppression, presuppression and emergency rehabilitation are the major activities of this program with the objective of maintaining a state of preparedness to combat wildfires promptly and efficiently, provide prompt and cost effective suppression of fires, and restore vegetative cover to burned over lands to minimize further damage from soil erosion.

Fire protection is provided to over 60,000,000 acres of Indian trust lands and fee patented lands lying within the exterior boundaries of the reservations. In the period 1982-1988, lands under Bureau protection experienced an average of 2,994 fires affecting 122,890 acres annually.

During an average fire season, the Bureau employs an estimated 1000 seasonal fire protection (presuppression) personnel generating salaries of approximately $7 million. The Bureau trains and manages approximately 200 organized Native American fire crews to assist in the suppression of wildland fires which exceed initial attack capabilities. These crews also assist other Federal or State fire suppression organizations. In 1987 and 1988, these organized fire crews earned in excess of $15.0 and 25.0 million respectively, supplementing reservation economies in the form of payroll.

The Bureau is recognized as a full partner in the wildland fire management community, and not only provides state-of-the-art fire management to the Native American community, but provides a major support role to other Agencies in the common approach to fire protection. During the 1987 and 1988 fire seasons, the Bureau made major commitments of its fire resources to support other fire Agencies battling the large disaster fires which occurred during that time. Also during the 1987 campaign in Northern California and Southern Oregon, an estimated 25 percent of the total manpower committed during the peak effort was provided by the tribes and the BIA.

The recommendations of the 1989 Fire Management Policy Review Team are being fully incorporated into the Bureau of Indian Affairs Fire Management Manual system. The BIA fire staff is assisting in revising the Department of the Interior manual, and is identifying the portions of the BIA manuals that will need revising. The approved revised manual should be in field use by May 1990.

b. The Bureau of Indian Affairs has long been recognized as a pioneer in the field of prescribed fire use. Early efforts during the 1940's by Bureau personnel still provide much of the foundation for prescribed fire practices used throughout the country today. We are continuing to play a leadership role in this field through the development of performance and qualification standards, prescribed fire training programs, and interaction with partner agencies to meet the more stringent environmental constraints under which we must operate today.

5. Timber Management Program: This program has the responsibility to provide stable and economic returns to the Indian owners, from the sale of their forest products, by managing Indian forests under sustained yield principles and by providing technical assistance in marketing and other economic development ventures. Since 1970 this program has returned to tribes an average of $65.6 million in timber stumpage payments per year. Approximately one-third of all timber harvested from Indian lands is processed through tribal mills. This results in increased revenue and increased reservation employment. In addition, approximately 2,500 people are employed full time in timber management activities on the reservations.

The sale of Indian timber results in regional economic benefits of approximately 9,000 jobs and $194.8 million in income off reservation.

6. Forestry Program Management: This program comprises all the activities to improve program efficiency and to comply with OMB Circular A-123 regarding waste fraud and abuse in Federal Programs. Principally, this is accomplished through sound fiscal accountability, effective program review

and information management. During the 1987-1988 fiscal year, three forestry program audits were submitted by the Inspector General and resolved. Since January 1, 1986, Area Forestry Offices have conducted more than 70 reviews at Agency and Field Offices within their respective jurisdictions. Another 60 reviews are planned to be completed prior to December 31, 1989. These reviews consist of the completion of an approved questionnaire by the reviewing Area Office on the Agency being reviewed and provide a means by which the program is assured of the proper oversight.

Additionally, the Central Office conducted 4 extensive Area Office quality control program reviews and one follow-up review. The Division also participated in three Office of Trust and Economic Development program reviews of Area Offices, with emphasis placed on accountability and policy implementation. Sound information management has been achieved through an automated communications network allowing for the electronic transfer of administrative information between offices in Washington, D.C.; Portland, Oregon; and Boise, Idaho as well as Area and Agency field offices.

7. Woodland Management: There are 4,501,940 acres of commercial woodland on 121 Indian reservations in 16 States not included in forest management plans. While these acres receive wildfire protection, funds have not been appropriated for their management. Based on a BIA study, over $38 million in benefits were derived by Native Americans from their woodlands in 1986. A large portion of those benefits were for personal use/subsistence (e.g. personal use of fuelwood and cultural foods). Potential commercial uses of woodland products create many opportunities for economic development.

8. Forest Archeology: The Bureau's forestry program manages 15.1 million acres of Indian and Alaska Native forest lands in trust or restricted status. This includes 6.4 million timberland acres and 8.3 million woodland acres classified as accessible and available for management activities. Where management activities are proposed, the Bureau is responsible for historic preservation in accordance with the National Historic Preservation Act of 1966, as amended. Activities involve locating historic and cultural sites. Lack of resources inhibit achieving archeological clearances necessary for the timely sale of forest products. This has an adverse impact on tribal revenues that are necessary to operate tribal programs and provide capital for economic development.

9. Forester Intern Program: The Indian Forester Intern Program is a University level education program funded by the Division of Forestry designed to qualify GS-462 series forestry technicians to GS-460 series forester positions. To date, fourteen interns have been re-classified into the Forester GS-460 series. Of these, eight achieved Bachelor of Science Degrees and six converted to forester status by meeting X-118 Office of Personnel Management standards.

Additionally, the BIA in cooperation with the U. S. Forest Service and Haskell Junior College started a program to bring Native Americans into Natural Resource disciplines. In 1988, thirty students were employed during the summer. In 1989, seventy five students are enrolled in the program. Eleven of the students are participating in the Cooperative Education Program. Upon completion of two years at Haskell, these students will continue their education at four year institutions where Haskell has matriculation agreements.

10. Forest Pest Management: This forestry program segment is conducted in cooperation with the Secretary of Agriculture who administers the nationwide Federal forest pest management program through the authorities of the Cooperative Forestry Assistance Act of 1978 (P.L. 95-313). The agreement of March 28, 1983, between the Departments of Agriculture and Interior, provides for funding and technical assistance through the U.S. Forest Service for approved forest pest management activities.

Annual forest pest suppression funds appropriated for all ownerships nationwide ranges between 50 and 75 percent of need. On Indian lands, annual funding ranges between 38 and 100 percent of need, with $583,000 (58 percent) project dollars received in 1988.

11. Timber and Fire Trespass: This program ensures that unauthorized timber losses are investigated, reported, payment demanded, and compensation made to the Indian owners. Timber trespass is a problem on Indian lands as on public and other private lands. Limited resources and authorities inhibit effective control.

IV. VISIONS FOR THE FUTURE:

The Indian Forestry Program will experience significant challenges and changes in the years ahead. In the next decade, the Division of Forestry should be very close to completing requirements of several program segments in addition to attaining the goals and objectives stated in the Intertribal Timber Council's Vision 2000 Report. The forestry program segments that will receive much attention are:

FOREST DEVELOPMENT: A major forestry goal is to completely eliminate the forest development backlog remaining in the shortest possible time frame at the lowest cost. Another goal is to phase in a permanent regular forest development program of scheduled silvicultural treatments conducted in accordance with sustained yield management principles and formal forest management plan prescriptions.

FOREST MANAGEMENT INVENTORY AND PLANS: It is forestry's goal to complete all forest management plans on schedule and to meld our process of forest planning into the total resource planning process of the future. Although Integrated Resource Management Planning (IRMP) is a process and not a forestry program segment, it is a goal of the Vision 2000 Report. The Division of Forestry has already taken the first step toward this new planning process by sponsoring the first Reservation Resource Management Plan completed; the Grand Portage Indian Reservation Integrated Resource Management Plan. The Division has also released a forestry manual supplement (guideline) regarding IRMP and is committed to sponsor one IRMP project per year. Several Area Offices have completed IRMP projects also. This program activity should steadily increase during the next decade.

TIMBER SALE MANAGEMENT: It is forestry's goal to harvest timber and other forest products from tribal and individual Indian lands in accordance with sustained yield principles and to maximize profits through improved marketing techniques. Forest products marketing is one of the key ingredients to achieve

Indian self-determination. Over the next decade, the program will focus efforts in several areas. In cooperation with tribes, the BIA will continue to support and provide assistance in developing forest and woodland products business enterprises. The tribes and the BIA will evaluate new and emerging forest products and provide assistance in developing business plans and securing funding for promising business ventures. Developing opportunities for tribal members in the forest product marketing area is an important goal of Indian self-determination. This may involve educational opportunities at institutions of higher learning, on-the-job training, short-courses, seminars, and workshops. We believe that enhanced opportunities for tribal members will give Native Americans greater control of their resources and will expedite the process of Indian self-sufficiency.

It is also forestry's goal to develop the Indian woodland resource through sound forestry practices and enhanced marketing skills. Indian woodlands represent an entirely new frontier. The woodland is an undeveloped resource that has the potential to provide new and significant sources of revenue for tribal operations. Utilization of this expansive resource will provide a variety of new employment opportunities for Tribal members. Only a small area of the approximate 8 million acres of Indian woodland has been inventoried for its wood product values. Consequently, the BIA has not been able to forecast with any degree of accuracy the social and economic benefits that could be derived from the woodlands and accrue to the tribes. Over the next 10 years, the goal is to emphasize woodland management by applying the necessary resources to implement an intensive management program, from inventory/data collection to product and market development for Indian-owned business enterprises.

NATIVE AMERICAN FORESTRY AND NATURAL RESOURCES EDUCATION: It is forestry's goal to invest in forestry and natural resources education of native americans. The Forester Intern Program shall continue to operate, hopefully with greater participation. We shall continue to seek permanent funding for this program outside the Division of Forestry. This program epitomizes the Administration's Indian Self-Determination policy, and certainly deserves greater support. The natural resources curriculum for Native Americans at the Haskell Institute should and hopefully will also receive much greater funding and support in the years ahead. The interest shown there in natural resource programs, by Native Americans, is increasing almost geometrically.

INFORMATION COLLECTION AND REPORTING: It is forestry's goal to fully automate the information reporting process. It is our intent to invest program resources into a project designed to automate vertical and horizontal information flow. Indian tribes will benefit from the increasing rapid information flow through enhanced marketing capabilities based on current up-to-date resource data.

Before closing this testimony, we most heartily applaud Dr. Gary Morishima's statement recorded at the September 1, 1987, Senate Select Committee on Indian Affairs Oversight Hearings, Nespelem, Washington. "There are many areas of the Indian forestry program in need of positive action. ...... Tribes must develop their own vision of the future and work to shape their own destiny. They must establish the agenda for Indian forestry and implement it through a strong partnership with the BIA and the Congress. Through the efforts of the tribes, the Intertribal Timber Council, the BIA Division of Forestry and Congressional Appropriations Committees; the partnership that has begun to emerge during the last decade must be expanded and strengthened over the next."

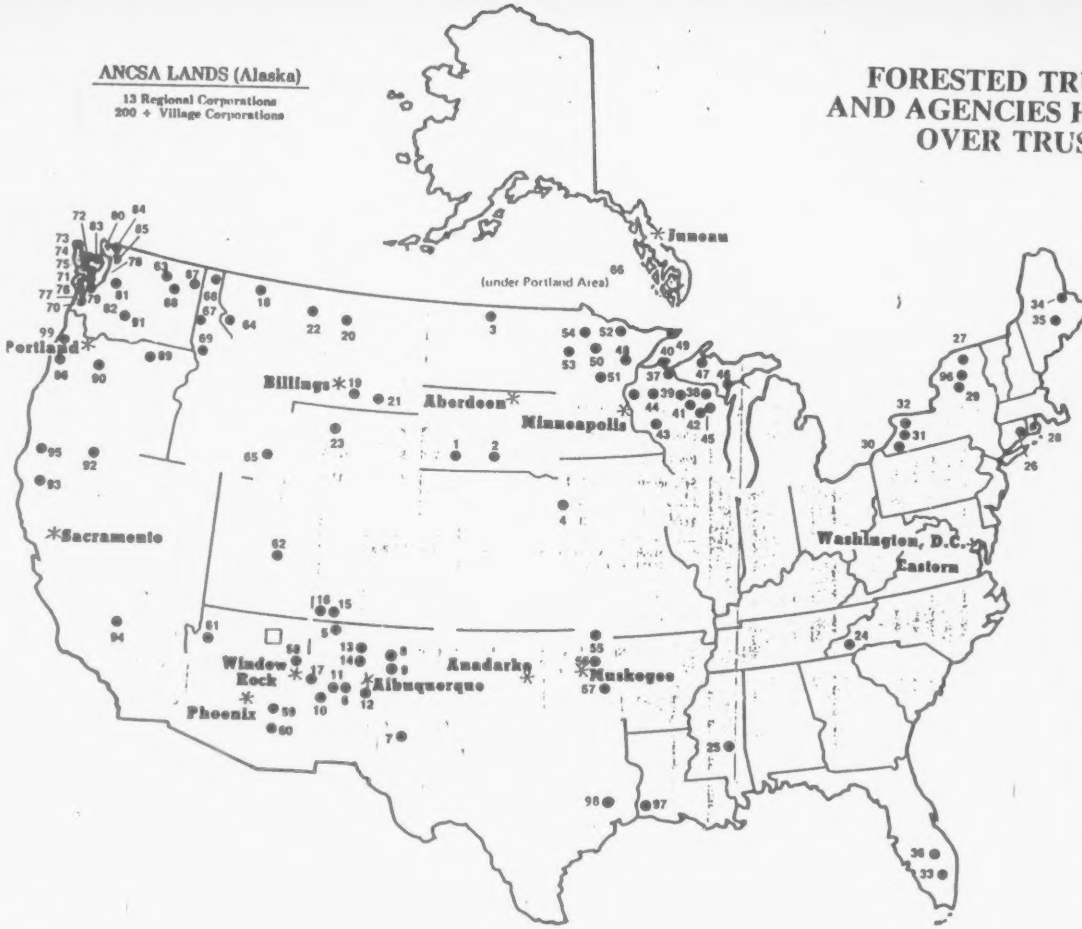
The BIA Division of Forestry, for its part, shall continue to expand and strengthen its Indian Forestry Program management partnership with Indian tribes, the Intertribal Timber Council and the Congress. We shall support and assist Indian tribes as they develop their forest resources and further expand activities into forest products marketing and other economic development ventures.

Finally, we believe that the old paternalistic character of the Federal/Indian relationship, throughout the Division of Forestry, is rapidly passing into history. We consider the joint Indian forest management relationship with Indian tribes and the Intertribal Timber Council an integral component of BIA forest policy, and remain committed to promote, develop and expand Indian forest resources, economic opportunities and Indian self-determination, in harmony with the goals and desires of the Indian people.

FORESTED TRUST RESERVATIONS AND AGENCIES HAVING JURISDICTION OVER TRUST ALLOTMENTS

ANCSA LANDS (Alaska)

13 Regional Corporations
200 + Village Corporations



● FORESTED RESERVATIONS

*AREA OFFICES

1. Pine Ridge
2. [redacted]
3. Turtle Mountain
4. Winnebago
5. Jicarilla
6. Laguna
7. Mescalero
8. Picuris
9. Taos
10. Ramah Navajo
11. Acoma
12. Isleta
13. Jemez
14. Zia
15. Southern Ute
16. Ute Mountain
17. Zuni
18. Blackfeet
19. Crow
20. Fort Belknap
21. Northern Cheyenne
22. Rocky Boy's
23. Wind River
24. Eastern Cherokee
25. Choctaw
26. Mashantucket Pequot
27. St. Regis Mohawk
28. Narragansett
29. Onondaga
30. Seneca
31. Tonawanda Seneca
32. Tuscarora
33. Miccosukee
34. Passamaquoddy
35. Penobscot
36. Big Cypress (Seminole)
37. Bad River
38. Forest County Potawatomi
39. Lac du Flambeau
40. Red Cliff
41. Sokaogon
42. Stockbridge
43. Wisconsin Winnebago
44. Lac Courte Oreilles
45. Menominee
46. Hannahville
47. Keweenaw Bay
48. Fond du Lac
49. Grand Portage
50. Leech Lake
51. Mille Lacs
52. Nett Lake
53. White Earth
54. Red Lake
55. All Miami
56. Cherokee (Oklahoma)
57. Choctaw (Oklahoma)
58. Navajo
59. Fort Apache
60. San Carlos
61. Hualapai
62. Uintah and Ouray
63. Colville
64. Flathead
65. Fort Hall
66. Annette Island
67. Coeur d'Alene
68. Kootenai
69. Nez Perce
70. Chehalis
71. Hoh
72. Lower Elwha
73. Makah
74. Ozette
75. Quileute
76. Quinault
77. Shoalwater
78. Skokomish
79. Squaxin Island
80. Lummi
81. Muckleshoot
82. Nisqually
83. Port Gamble
84. Swinomish
85. Tulalip
86. Siletz
87. Kalispel
88. Spokane
89. Umatilla
90. Warm Springs
91. Yakima
92. Fort Bidwell
93. Round Valley
94. Tule River
95. Hoopa Valley
96. Oneida
97. Alabama-Coushatta
98. Alabama-Coushatta
99. Grand Ronde

FORESTRY PROGRAM FUNDING AND POSITION ANALYSIS
FY 1987
SUMMARY OF KEY DATA BY AREA

	ABERDEEN	ANADARKO	BILLINGS	JUNEAU	MINN.	MUSKOGEE	PHOENIX	SACRA.	ALBU.	NAVAJO	PORTLAND	EASTERN	CEN.OFF.	TOTAL
OBLIGATIONS - ALL APPROPRIATIONS(M$)														
Buy-Indian Contracts (4.7)	82.2	0.0	266.8	21.4	66.3	3.1	4.0	105.1	8.3	220.0	459.7	0.0	160.2	1426.8
P.L. 93-638 Contracts (4.8)	82.0	0.0	20.3	345.1	1001.0	109.8	887.0	276.2	161.5	264.0	3685.6	882.8	0.0	7017.0
All Other Obligations	105.5	0.0	1111.4	823.0	2333.4	125.3	3288.1	802.2	2724.4	874.2	11058.4	638.2	1262.5	25120.8
Total (4.12)	280.6	0.0	1397.8	1190.4	3420.7	238.3	4238.0	1282.5	2884.2	1368.1	15214.7	1418.1	1432.7	34370.0
Fire Supp.,Presupp.,Rehab.(8.10)	1068.7	0.0	3811.1	546.8	541.1	64.3	6828.6	744.2	2848.1	664.0	8746.1	305.7	487.3	26812.8 1/
For. Mgt. Deductions (6.8)	0.0	0.0	28.4	0.0	38.6	0.0	403.0	207.9	28.6	220.0	2852.6	13.2	0.0	3974.7
Other Tribal For. Funding (7.8)	0.0	0.0	0.0	0.0	43.3	0.0	83.4	307.3	343.3	674.6	285.4	0.0	0.0	1687.3
Tribal Allottee Investments(16.8)	118.4	0.0	81.8	0.0	817.4	0.0	1458.0	842.0	33.1	744.2	5858.2	30.0	0.0	9194.8
Grand Total -- Obligations	1468.6	0.0	5330.0	1737.2	4268.0	202.6	13163.3	3184.7	8240.0	3863.3	33084.0	1768.8	1980.0	76038.5
TYPES OF STAFF AND STATUS (BIA)														
Foresters														
Occupied (8.6)	2.0	0.0	18.2	12.0	24.8	1.0	87.0	0.0	40.5	6.0	134.0	6.0	14.7	296.1
Vacant (8.7)	0.0	0.0	1.0	0.0	3.0	0.0	6.0	0.0	3.5	1.0	34.0	1.0	0.0	50.5
Technicians														
Occupied (8.8)	2.0	0.0	10.6	0.0	13.2	3.0	33.0	7.0	32.0	12.0	110.0	4.0	2.7	238.2
Vacant (8.9)	0.0	0.0	4.5	0.0	0.0	0.0	2.0	0.0	5.3	0.0	30.2	1.0	0.3	53.2
Support														
Occupied (8.10)	0.3	0.0	4.0	3.0	6.7	1.0	14.0	3.0	0.0	3.0	38.6	3.0	7.0	83.0
Vacant (8.11)	0.0	0.0	0.0	0.0	1.0	0.0	1.0	1.0	2.2	0.0	7.5	0.0	1.3	14.6
Other														
Occupied (8.12)	1.0	0.0	1.0	0.0	0.4	0.0	5.0	1.0	0.4	0.0	0.0	0.0	0.0	10.0
Vacant (8.13)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total 2/														
Occupied (8.16)	22.0	0.0	83.8	15.0	44.8	8.0	308.0	37.0	132.5	102.0	425.7	20.0	25.3	1234.5
Vacant (8.17)	0.0	0.0	20.3	0.0	10.4	0.0	80.0	7.0	12.3	1.0	82.0	3.0	2.2	208.0
TYPES OF STAFF AND STATUS (TRIBAL)														
Foresters														
Occupied (8.19)	1.0	0.0	0.0	3.0	11.1	1.0	4.0	2.0	0.0	0.0	24.0	4.1	0.0	58.2
Vacant (8.20)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	8.0	2.0	0.0	11.0
Technicians														
Occupied (8.21)	0.0	0.0	2.5	0.0	14.0	1.0	22.0	0.0	1.0	13.0	77.7	7.7	0.0	147.5
Vacant (8.22)	0.0	0.0	0.0	0.0	2.0	0.0	0.0	0.0	0.0	0.0	16.5	0.0	0.0	18.5
Support														
Occupied (8.23)	0.0	0.0	0.5	1.0	2.1	1.0	8.0	0.4	0.0	5.0	24.5	2.4	0.0	45.0
Vacant (8.24)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	3.0	0.0	0.0	3.0
Other														
Occupied (8.25)	0.0	0.0	0.0	0.0	0.0	0.0	1.0	0.0	0.0	0.0	[illegible]	0.0	0.0	1.0
Vacant (8.26)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total 3/														
Occupied (8.29)	5.0	0.0	3.0	4.0	27.8	3.0	46.3	17.4	31.0	73.0	400.0	20.2	0.0	630.0
Vacant (8.30)	0.0	0.0	0.0	0.0	2.0	0.0	0.0	0.0	0.0	0.0	48.0	2.0	0.0	52.0
STATISTICAL DATA														
For. & Rge. Prot.(M.Ac.)(14.1)	11308.4	0.0	8370.0	1200.0	1288.1	402.1	18374.3	413.2	4301.0	14308.2	5215.1	430.9	0.0	60070.2
Total Forest (M.Ac.)(13.1)	348.6	0.0	718.0	337.0	[illegible]	52.3	8070.0	156.0	1746.4	4884.2	2017.8	347.2	0.0	15095.4
Com. Forest (M.Ac.)(13.2)	48.0	0.0	226.1	814.8	882.1	30	787.0	110.7	416.0	500.0	2214.6	100.0	0.0	5808.7
Stat./Admin. AAC (MMBM)(13.5)	2.70	0.00	23.30	16.60	284.43	2.10	[illegible]	18.00	37.07	40.00	518.40	28.10	0.00	[illegible]
Timber Harvest														
Volume (MMBM)(13.8)	1.21	0.00	7.03	0.00	80.66	1.35	85.71	51.04	2.80	30.50	419.65	23.32	0.00	724.80
Value (M $)(13.10)	69.5	0.0	144.1	0.0	2284.4	9.3	8541.8	3448.4	126.5	2100.7	51805.2	823.8	0.0	67235.1
Pre-1977 Backlog														
Reforestation (M.Ac.)(14.7)	0.1	0.0	3.0	0.0	16.1	10.3	0.0	7.0	25.5	7.0	50.0	1.3	0.0	122.1
TSI (M.Ac.)(14.9)	2.0	0.0	24.2	0.0	13.0	10.4	28.5	12.1	170.3	30.0	128.4	15.8	0.0	450.2
Post-1977 Backlog														
Reforestation (M.Ac.)(14.11)	2.0	0.0	1.1	0.0	2.4	0.0	0.0	1.1	0.0	0.0	3.4	5.0	0.0	15.0
TSI (M.Ac.)(14.13)	3.9	0.0	10.5	0.0	4.2	0.0	178.2	18.0	1.0	1.2	9.3	15.3	0.0	244.1

1/ [illegible]

BUREAU OF INDIAN AFFAIRS

ANNUAL TIMBER HARVEST [1] VS ALLOWABLE ANNUAL CUT

	CONTRACT SALES			PAID PERMIT SALES			TOTAL CONTRACT & PAID PERMIT SALES			Biological	AAC	Pot. Income
CY or FY	Total Volume (MBM)	Total Value ($)	Ave. Price Per MBM	Total Volume (MBM)	Total Value ($)	Ave. Price Per MBM	Total Volume (MBM)	Total Value ($)	Marketable AAC (MBM) [2]	and/or Admin. AAC (MBM)	Shortfall (MBM)	Shortfall [3] ($)
1970	708,169	23,908,899	$ 33.76	36,221	781,537	$21.58	744,390	24,690,436		1,030,000	285,610	9,473,684
1971	811,339	31,266,656	38.54	36,947	615,229	16.65	848,286	31,881,885		1,030,000	181,714	6,828,812
1972	902,963	43,700,772	48.40	44,846	1,211,820	27.02	947,809	44,912,592		1,030,000	82,191	3,895,031
1973	861,521	66,349,886	77.01	56,074	3,673,845	65.52	917,595	70,023,731		1,030,000	112,405	8,577,626
1974	847,122	67,838,083	80.08	99,476	6,879,817	69.16	946,598	74,717,900		1,030,000	83,402	6,582,920
1975	757,163	48,079,013	63.50	49,379	1,788,796	36.23	806,542	49,867,809		1,030,000	223,458	13,816,408
1976	818,575	69,566,376	84.98	68,972	5,519,233	80.02	887,547	75,085,609		1,030,000	142,453	12,051,524
1977	865,643	85,265,039	98.50	42,518	3,636,824	85.54	908,161	88,901,863		1,030,000	121,839	11,926,820
1978	855,238	99,538,515	116.39	55,349	5,053,236	91.30	910,587	104,591,751		1,030,000	119,413	13,715,777
1979	785,489	115,317,229	146.81	33,058	1,854,066	56.09	818,547	117,171,295		1,027,000	208,453	29,840,046
1980	683,509	84,568,505	123.73	48,350	3,961,291	81.93	731,859	88,529,796		1,027,000	295,141	35,703,200
1981	632,687	70,902,496	112.07	45,065	1,707,796	37.90	677,752	76,610,292		1,025,000	347,248	37,204,150
1982	479,636	38,199,476	79.64	42,492	1,473,359	34.67	522,128	39,672,835		1,033,000	510,872	38,816,054
1983	557,597	55,837,932	100.14	68,669	2,817,981	41.04	626,266	58,655,913		1,022,000	395,734	37,064,446
1984	590,725	55,491,881	93.94	70,531	2,976,765	42.21	661,256	58,468,646		1,036,000	374,744	33,134,864
1985							646,479	48,132,215	893,200	1,017,000	370,521	27,585,288
1986	589,632	55,349,752	93.87	40,716	1,078,900	26.50	630,348	56,428,652	892,900	1,027,000	396,652	35,508,287
1987	671,706	65,753,725	98.04	40,972	962,261	23.49	712,678	66,715,986	885,300	994,200	281,522	26,353,274
1988	667,652	70,753,981	105.97	45,860	1,366,761	29.80	713,512	72,120,742	887,700	1,006,000	292,488	29,564,687
TOTALS							14,658,340	1,247,179,948		19,484,200	4,825,860	417,642,898

---

[1] Annual Reports, Division of Forestry, Washington, D.C. For Fiscal Year 1985, volume and value was obtained from Reports of Actual Timber Cut, Division of Forestry, Washington, D.C.

[2] A subjective estimate of the volume which the Indian owners are willing to sell and industry is willing to buy. Marketable AAC has only been estimated since 1985.

[3] Assumes no Bureau, tribal, or market constraints. Calculations are based on weighted average annual stumpage rates per MBM for contract and paid permit sales.

May 9, 1989

Testimony of Sam Miller
Chief, Division of Water and Land Resources
Before The Senate Select Committee On Indian Affairs, Special Committee On Investigations

June 8, 1989

Introduction:

The Division of Water and Land Resources is responsible for policy, direction, evaluation and oversight of the Agriculture, Range, Water Resources, Irrigation and Fish, Wildlife and Recreation programs within the Office of Trust and Economic Development. As requested by the Special Committee my statement today does not address the Water Resources activity. The Water Resources program was thoroughly addressed at a hearing conducted by Chairman Inouye, Senate Select Committee, on April 5, 1989. Transcript of these hearings are available in the Congressional Record.

The objective of the Division of Water and Land Resources is to protect, conserve, restore, improve, and enhance the agronomic, range, fish, wildlife and recreational resource values of Indian lands; develop the renewable resources to provide income and employment to Indians; regulate water runoff and minimize soil erosion; provide technical assistance to Indian Tribes and individual Indian land owners and users of these resources in the management and utilization of these resources consistent with principles of sustained yield management.

AGRICULTURE AND RANGELAND MANAGEMENT

Introduction:

Within the Bureau, management of agronomic and range resources are decentralized, with professional staff located at 11 Area Offices and 76 Agency Offices in 26 States providing technical assistance to 284 Indian reservations encompassing over 48 million acres. The agriculture staff is also responsible for providing assistance, technical support and necessary resources to develop and implement the wildlife and parks program on these reservation. In addition, the agriculture staff initiates all environmental reviews for trust lands, except forested land, and reviews all environmental assessments completed by other agencies.

RENEWABLE NATURAL RESOURCES PROFILE
(Agriculture, Range, and Water)

		Amounts
Rangeland/Forest Grazing/ Wildlands	(Acres)	43,772,427
Animal units	(No.)	712,301
Dry farmland	(Acres)	2,139,169
Irrigation farmland	(Acres)	846,674
Water reservoirs/lakes	(Acres)	1,277,449
Reservoirs/Impoundments	(No.)	19,904
Natural lakes and ponds	(No.)	1,738
Perennial streams	(Miles)	13,125
Coastal shoreline	(Miles)	271

The rangeland and livestock operations on most reservations are an important part of the economy and provide considerable employment and income. Over 43 million acres of these lands are primarily used for grazing by domestic livestock and big game animals. This is four-fifths of their total land area.

Indian ranching operations devoted to raising and tending livestock utilize 88.6 percent of the rangeland. About 7.4 percent of the rangeland, or approximately 3 million acres are used by non-Indian livestock operators.

A large majority of the non-Indian use is on productive rangeland on reservations in the northern plains and northwestern States where the landownership is a composite of intermixed tribally and individually owned allotted land, fee patent non-Indian owned land, and State and Federal land. Nearly three-fourths of the land used by Indians is almost exclusively tribally owned, on reservations in the States of Arizona, New Mexico, Utah, and Nevada.

The agriculture/range program provides Indian people with technical assistance of a kind that will encourage and motivate increased use and better management of these resources by Indians. More Indians need training in resource development, use, and management, so they can take over a much larger part of their agriculture program. Such an involvement will enable Indians to develop and use their land, water, and forage resources in balance with their environment. This will maintain their natural resources for continuous use and still contribute the maximum to their economy and social well-being.

In 1986, Indian families or tribes farmed approximately 887,524 acres, or 29.9 percent of the dryland and irrigated farm land on reservations. Approximately 1,509,948 acres, or 50.3 percent of the cropland was leased by non-Indian farmers. An additional 588,371 acres, or 19.7 percent were idle.

BUREAU OF INDIAN AFFAIRS

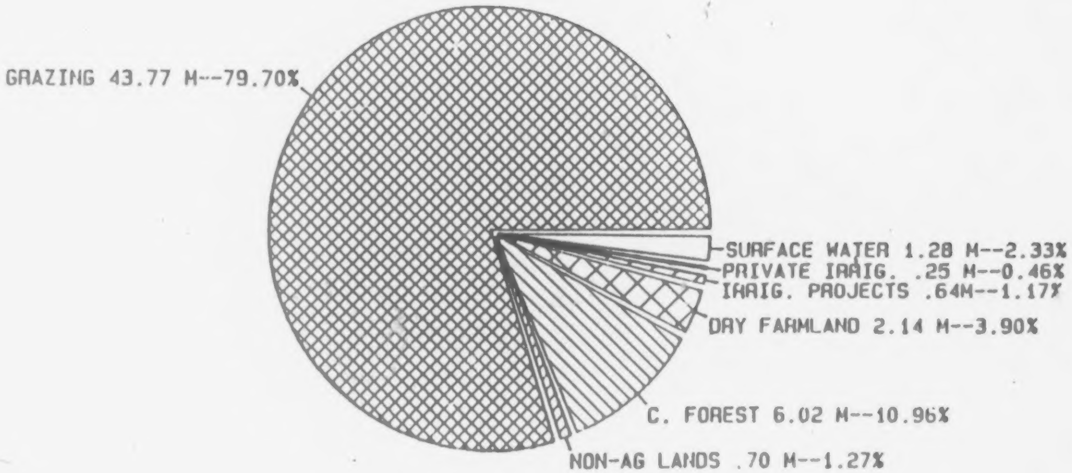
NATURAL RESOURCES INFORMATION SYSTEM

RENEWABLE NATURAL RESOURCES PROFILE

NATURAL RESOURCE AREAS	AREAS	OTHER
COMMERCIAL FOREST	6,017,594	
RANGELAND/NON-COMM FOREST/ PASTURE GRAZING	40,644,344	
DRY FARMLAND	2,139,169	
IRRIGATED FARMLAND	887,750	
WILDLANDS	3,128,083	
WATER-LAKES AND PONDS	1,277,449	
RESERVOIRS AND IMPOUNDMENTS		19,904 NUMBER
NATURAL LAKES AND PONDS		1,738 NUMBER
PERENNIAL STREAMS		13,125 MILES
COASTAL SHORELINE		271 MILES
OTHER NON-AGRICULTURE LANDS	708,445	
TOTAL	54,802,886*	

SOURCE: 1986 N.R.I.S. REPORT, PROCESS DATE 8/13/87
*INCLUDES LANDS TAKEN IN TRUST UNDER THE NAVAJO-HOPI SETTLEMENT ACT.

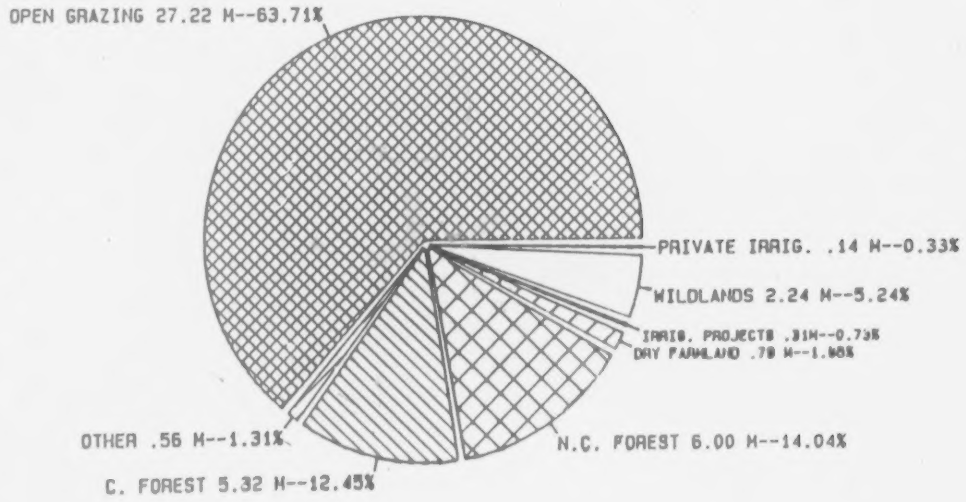
LANDUSE CLASSIFICATION UNDER BIA JURISDICTION



54.80 MILLION ACRES

1986 NRIS DATA, PROCESSED 8/13/87
GRAZING INCLUDES NON-COMMERCIAL FOREST, NATIVE

LANDUSE CLASS
LANDS UNDER BIA JURISDICTION
TRIBALLY OWNED

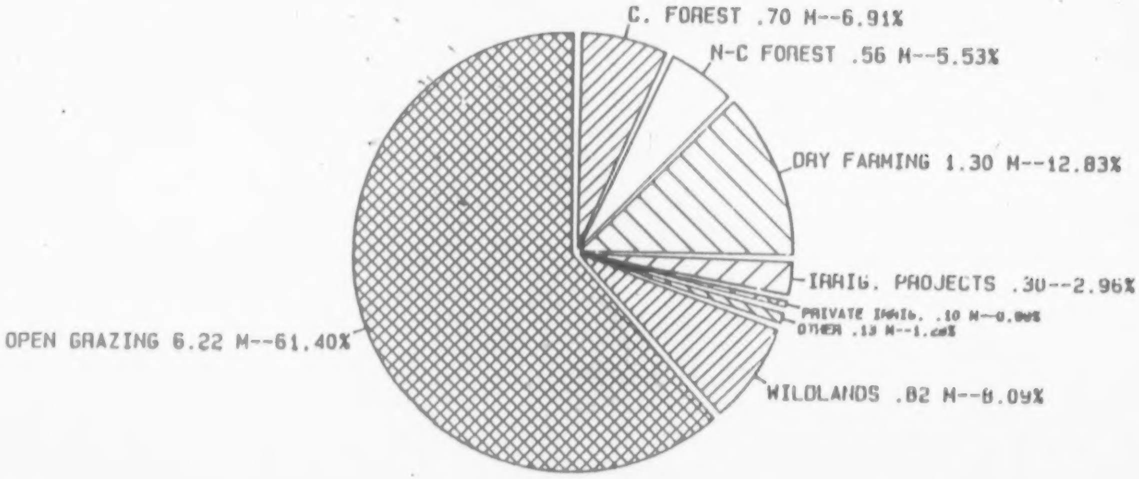


42.58 MILLION ACRES

1986 NRIS DATA, PROCESS DATE 8/13/87
ACREAGES ARE IN MILLIONS

N.C. = NON-COMMERCIAL FOREST
C. = COMMERCIAL FOREST

OWNERSHIP AND LANDUSE CLASS
UNDER BIA JURISDICTION
INDIVIDUALLY OWNED

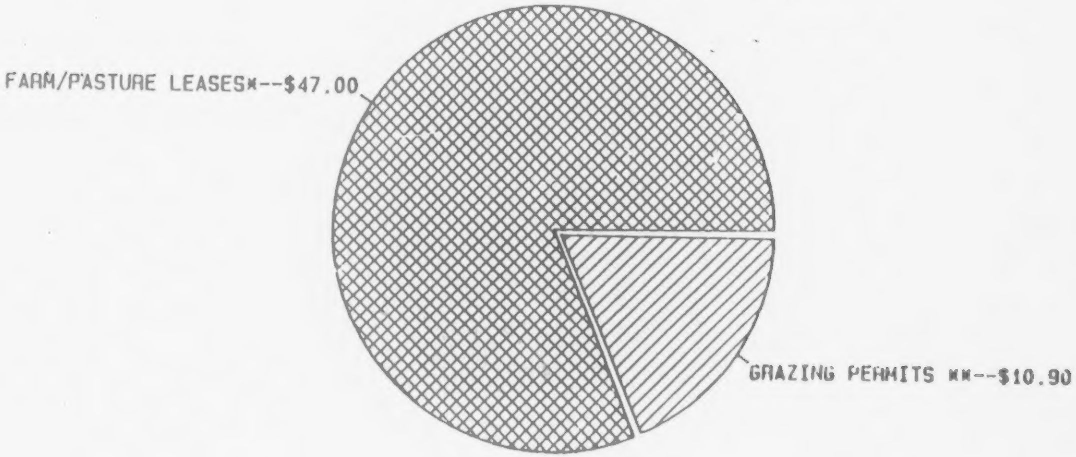


10.01 MILLION ACRES

FUNCTIONAL RESPONSIBILITIES OF BIA

- SOIL AND RANGE INVENTORY
- LAND CLASSIFICATION SURVEY
- LAND CAPABILITY CLASSIFICATION
- ESTABLISH RANGE UNITS
- FEASIBILITY INVESTIGATIONS
- ECONOMIC STUDIES
- ESTABLISH STOCKING RATES BY RANGE UNIT BY RESERVATION
- FARM AND RANCH PLANNING
- IDENTIFY UNITS OR TRACTS FOR POTENTIAL LEASE
- DETERMINE FAIR RENTAL VALUE FOR GRAZING FORAGE
- ADVERTISE FOR COMPETITIVE BIDDING AND CONDUCT LEASE/PERMIT/AUCTION SALES AND MAINTAIN RECORDS
- APPROVE/DISAPPROVE LEASES/PERMITS BIDS
- COLLECT AND ACCOUNT FOR PERMIT PAYMENT
- DISBURSE PAYMENTS PROMPTLY
- CONDUCT LEASE/PERMIT COMPLIANCE INVESTIGATIONS
- ENFORCEMENT OF LEASE AND PERMIT CONTRACTS
- MONITOR RANGE CONDITION
- MODIFIES OR CANCELS LEASES/PERMITS AND MAINTAINS PRIMARY PERMIT RECORDS
- PROVIDES TECHNICAL ASSISTANCE TO FARMERS AND RANCHERS ENGAGED IN AGRIBUSINESS ON INDIAN LANDS

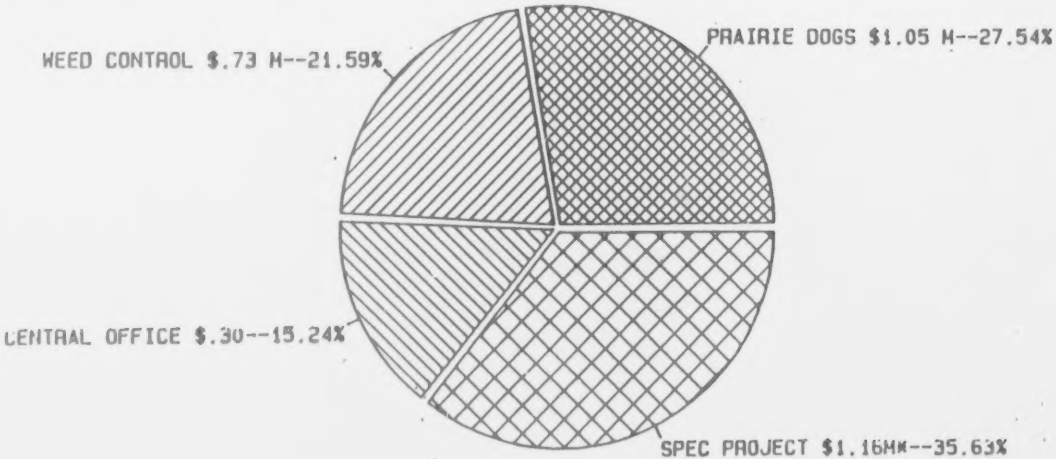
ANNUAL RENTAL INCOME
FARM & PASTURE LEASES & GRAZING PERMITS
VALUES IN MILLIONS OF DOLLARS



$57,900,000 TOTAL

* 1985 ANNUAL REALTY REPORT, 9/30/85
[illegible]

FY 1988 AGRICULTURAL/RANGELAND
NON-BANDED PROGRAM



$3, 242, 000 TOTAL

* GILA RIVER FARMS
HAVASUPAI RANCH REHABILITATION
[illegible]

A. Current Program

Central Office Operations: The Central Office provides staff assistance and advice to the Deputy to the Assistant Secretary Indian Affairs (Trust & Economic Development) on matters relating to establishment of program standards, policy and procedures for the bureauwide agriculture and range programs which include agriculture, range, soil and moisture conservation, hazardous waste and the application of pesticides. This staff provides: (1) advice for all activities related to the planning, management, conservation, development and utilization of the Indians' soil, water and rangeland resources; (2) administers the Bureau's pesticide, herbicide and animal damage control program on Indian lands; and (3) directs the Bureau's floodplains management program. Maintains liaison and close working relations with other fedeal agencies, area and agency officials on matters affecting Indian renewable natural resources. The staff also provides budget planning and development for all of these activities, as well as assistance to area office staff in carrying out oversight and program review for the Assistant Secretary-Indian Affairs.

The Central office also provides technical assistance to and monitors contracts with the Inter-Tribal Agriculture Council, conducts Indian agriculture syposia to exchange information with Indian farmers and ranchers, conducts quarterly agriculture meetings with BIA agriculture officials, coordinates and administers the Agriculture Intern Program, and disseminates information to tribes on agriculture-related matters and issues.

Area Office Operations: The Area Offices are responsible for implementing policy and procedures for the agriculture and range programs. The program staff provides assistance and advice to the area director and agency superintendents on matters relating to planning, management, conservation, development and utilization of Indian soil, water and rangeland resources; administers pesticide programs on Indian lands; and directs the floodplains management program. Technical assistance is provided for establishing and overseeing grants or contract under P.L. 93.638.

Prairie Dog Control: A five-year program to control prairie dogs on the Pine Ridge Indian Reservation was initiated in FY 1985 as stipulated by the U.S. Federal Court for the District of South Dakota (Civil No. 80-5070). The program has resulted in elimination of prairie dogs on approximately 259,000 acres previously treated with zinc phosphide during FY 1987.

Noxious Weeds and Soil Erosion Control: A committee composed of personnel from the Department of the Interior and the Department of Agriculture will coordinate with county, state and tribal organizations to identify and map out the most serious weed problem areas. Treatment measures will be designed to reduce further spreading of noxious weeds and resultant losses of land and resources on Indian farms, ranches and in other projects. It is estimated that approximately 10-20 thousand acres can be treated, depending on the host weed, the selected control method, and the timing of application needed.

Gila River Farm Projects: The Congress appropriated $650,000 in FY 1988 to allow the Gila River Tribe to expand their agriculture operation at Sacaton Ranch by diversification into high income specialized crops which can be marketed locally.

Havasupai Range Rehabilitation: The Congress appropriated $450,000 in FY 1988 for a range rehabilitation and management plan for 185,000 acres of the Havasupai range.

Nez Perce Soil Fertilization: The Congress appropriated $550,000 in FY 1988 for the Nez Perce Tribe to collect baseline soil fertility data for crop production and for soil and water conservation planning purpose.

B. Planned Initiatives:

Prairie Dog Control Program: Although the Prairie Dog Program on the Pine Ridge Reservation was successful, there is a growing invasion of these pests on four other Reservations in the Norther Great Plains.

Ft. Peck	10,000 acres
Rosebud	36,000 acres
Cheyenne River	30,000 acres
Northern Cheyenne	30,000 acres

There is a need for a continued Prairie Dog Control through this area. The program will be accomplished in cooperation with local tribal, state and county entities.

Inter-tribal Agriculture Council: In November 1987, the BIA and the various Tribes throughout Indian Country established an Inter-Tribal Agriculture Council (IAC). The purpose of the IAC is to pursue and promote the conservation, development and use of Indian agriculture resources for the betterment of Indian people.

To promote the tribal and individual Indian participation in this endeavor, the IAC proposes to continue the consultation process throughout Indian country, host an annual symposium where all aspects of agriculture, from production to marketing, will be addressed, reviewed, critiqued and comments provided on the Bureau agriculture/range program. We believe this initiative to be a very worthwhile endeavor and will provide continued support when asked by the IAC.

Career Professional Training: As you have seen, the Bureau is responsible for a tremendous natural resource program in Indian Country. In the range resource alone the Bureau is responsible for the management and administration of some 44 million acres of trust Indian rangeland. To accomplish these objectives, the Bureau hires professional range conservationists to assist the Agency Superintendent in collecting vegetative data, analyzing this data, recommend stocking rates, establish range units, prepare range management plans, with assistance from the Soil and Moisture Conservation Section implement development of these plans, provide technical assistance to the tribal government and individual Indian ranchers, issue grazing permits, collect and distribute grazing rental fees, enforce compliance of the permit contracts, provide technical assistance in the field of fish and wildlife, serve as line control officer along with numerous other activities which arise in the day-to-day working of the Agency program

In most cases, the Bureau has one GS-11 Range Conservationist at each Agency trying to handle this multitude of activities. In many cases, this results in trying to carry out a sound range management program on one million acres of rangeland resources with numerous permittees and landowners with a single person.

In many cases, these individuals are ill-prepared to deal with the complexities associated with the Federal Government's relationship with the Indian people and their resource.

The purpose of this new program will be both an effort to provide in-depth training for new employees while collecting much needed data for making management decisions, and provide a cadra of trained range conservationists to fill entry and journeyman, level positions at the Agencies throughout the Bureau.

The program will consist of in-depth training in all phases of the range management activity including, data collection and analysis, range development, planning, permit administrating education; tribal-Bureau relationship and administration. The project is designed to take five years for full implementation.

During the first year, the candidates will be assigned to a vegetative inventory team and will gather vegetative data in accordance with Area Office priority. The data collected will be utilized by the agencies to update stocking rates and provide other data necessary for integrated resource planning.

Noxious Weed Eradication: FY 1988 is the first year of the noxious weed control program, and a comprehensive survey will be conducted to identify critical weed infested areas on Indian lands. A five-year plan will be prepared with recommendations for control of infested acres. Based on priority control needs and using EPA-approved weed control agents, the control program will be initiated in FY 1988 on approximately 20 percent of the infested areas. The plan will identify and establish priority areas for future control.

IRRIGATION
CONSTRUCTION, OPERATION AND MAINTENANCE

A. Background

Irrigation of Indian Lands has been an ongoing process for over 1000 years, as evidenced by archaeological finds and Tribal histories. Tribes in the Southwestern United States constructed and operated sophisticated water delivery and distribution systems for crop production long before European settlers colonized the Eastern seaboard. These irrigation projects, located in what is now New Mexico and Arizona, provided food items in return for trade goods to Tribes as far away as the Pacific Coast.

The Federal government first demonstrated a direct interest in Native American irrigation projects in 1867. The Act of March 2, 1867, (14 Stat. 492), provided for $50,000 for "...the expense of collecting and locating the Colorado River Indians in Arizona... including the expense of constructing a canal for irrigating said reservation." This canal was completed with additional appropriations, but was abandoned when operation of the canal proved unsuccessful.

Authority for general development of irrigation projects on Indian lands first occurred in 1884, when $50,000 for irrigation purposes, to be spent at the discretion of the Secretary of the Interior, was approved by Congress (Act of July 4, 1884, 23 Stat. 76). The General Allotment Act of February 8, 1887, (24 Stat. 390) further empowered the Secretary of the Interior to prescribe rules and regulations for irrigation on Indian lands.

Currently, there are 73 irrigation projects administered by the Bureau which provide irrigation services to 1,155,131 acres of land. This irrigated land is composed of tribal, allotted, and fee patented ownership. In the Northwest, the vast majority of irrigated land has been allotted. In the Southwest, a few allotments have been made, but the majority of irrigated land remains in tribal ownership. Much of this land would be totally unproductive if not provided with irrigation water.

In addition to these formally designated projects, there is substantial irrigation in Indian Country which is not in a Bureau "designated" project. For example, 4 reservations in the Aberdeen Area, including Yankton, Winnebago, Standing Rock, and Lower Brule have large, tribally-operated, sprinkler irrigation systems. On the

Navajo Reservation, there are 24,000 acres of irrigated land reported by the Shiprock Agency, and additional irrigation in other regions. These projects and acreages are not specifically covered in this report, but share many of the conditions and attributes of the projects which are included.

The Bureau also operates four electrical power projects in conjunction with irrigation projects: Colorado River Irrigation Project, Flathead Irrigation and Power Project, San Carlos Irrigation Project, and the Wapato Irrigation Project. Each of these four power projects were established on Indian reservations by Congressional legislation to provide power for pumping of water to supplement gravity flow for irrigation on Indian lands. Currently, these projects supply domestic, municipal, industrial and agricultural users both on and, in some cases, off the reservations or projects.

Crop values produced in Indian irrigation projects vary from year to year, and were estimated to exceed $116 million per year in a recent Inspector General's Audit Report. Actual production values for the entire irrigated land base are not available. However, crop reports from the Portland Area Office record a market value of $145 million for crops grown in 1987 on the three large Indian irrigation projects in that region. Since these three projects total 277,846 acres, or only 24% of the total lands in Indian irrigation projects, it is likely that total crop production greatly exceeds the estimate reported above.

B. Beneficiaries

There is a great diversity among the recipients of irrigation services provided by the Bureau. The Bureau's irrigation projects, often referred to as "Indian projects," were theoretically created to serve Indians located on reservations. Because of the historical events and patterns in Indian Country, however, most projects now also serve non-Indians. This includes non-Indian land owners, as well as non-Indian lessees of Indian lands. In addition to the projects that were totally located within the reservation boundaries, Congress authorized the inclusion of off-reservation lands in the enabling acts of certain projects.

There are tribally owned lands, allotted lands, and fee patent lands contained in the projects. The tribal governments may own both tribal lands and an undivided interest share in allotted lands. Individual Indians may have sole ownership or undivided interest in trust or restricted lands, or they may own patent-in-fee lands. Non-Indians own fee patented lands, and in many cases lease tribal or allotted trust lands.

The value of land under these irrigation projects is directly related to local economic conditions, the condition of the irrigation delivery system, and the ability of the system to furnish water on a timely basis, regardless of ownership status. Therefore, in the protection of trust land, the maintenance and development of the irrigation delivery system serving that land is critically important.

Indian owners of trust land who farm the land provide a livelihood for themselves and their family. When Indian-owned irrigated land is leased, the owner receives rental income and the lessee benefits from the products of the farming endeavor. Fee land, whether owned by Indians or non-Indians, generates income for the individual owners and farmers, and supports the local county through the payment of taxes.

The group which is the major recipient of services from the Indian irrigation projects is the water-users. The water-user may or may not be the owner of the land which is being irrigated. As a result of multiple ownership status, credit constraints, the agriculture economy, and social/cultural trends, much of the irrigated land within irrigation project boundaries is farmed by someone other than the owner. For these reasons, the water-users are generally the user group which is most immediately affected by the Bureau irrigation project service delivery.

The crops grown, and therefore the economic contributions of specific irrigation projects, differ from one region to another. For example, in portions of the Southwest which have long growing seasons, high value row crops such as lettuce or melons, can provide relatively high per acre incomes to the water-users. This region also contains large numbers of small subsistance "garden tracts" which provide marginal income or produce table crops for personal consumption. In the Northern Great Plains, extremely short growing seasons preclude the production of these or related crops, and most irrigated lands are in larger tracts which are used by cattle ranchers to produce winter livestock feed. The irrigated crops in this region have low cash value, but are critical to the support of the livestock herds, which are vital to the economic and cultural well-being of the region.

In addition to those who actually own the land and those who use the land and water, irrigated areas of trust or restricted land benefit a large segment of society. Since many individuals engaged in farming enterprises must borrow operating capital, local lending institutions profit from the local agricultural activity. Others who benefit include those local agribusinesses which provide the seed, fertilizer, pesticides, herbicides, machinery, parts, labor, repairs, processing, storage, and brokerage.

There are additional groups, other than those with economic involvement, who impact project operations. Peripheral recipients of project services and resources include recreationalists, upstream and downstream water appropriators, wildlife concerns, and the general public who directly or indirectly benefit from the control and use of waters for irrigation purposes.

Policy that has evolved over time may not adequately address the conditions and problems encountered in providing irrigation services in a timely fashion. Since there are so many combinations of lands, owners, and users, project operation and administration is compounded significantly. Although the Indian projects must serve all lands on an equitable basis, each of the various entities have their own particular rights, obligations and restrictions, as provided for in legislation. As a result of these factors, no single group of beneficiaries adequately represents the whole. In many instances one interest group may be in direct conflict with the other interest groups. For example, a water-users association comprised largely of tenant farmers may be opposed to the interests of the Indian landowners, and may be totally contrary to the needs and desires of tribal governing bodies concerned with self-determination and reserved water-rights.

C. Summary of Public Testimony

Public hearings to obtain tribal and public input on the Report to Congress mandated by PL-99-190 were held in Billings, Montana on July 10, 1986, and in Aberdeen, South Dakota on July 11, 1986. Testimony from those two hearings was summarized and used as a basis for many of the recommendations in the September 1986 Report to Congress on Bureau Agriculture-Range Programs.

A recommendation of the subject report was the continuation of the Public Hearing process, to provide an opportunity for all Indian tribes and interested parties to express their concerns on the state of agriculture in Indian country, and the effectiveness of the Bureau and tribal roles in agriculture.

A total of 12 additional public hearings were held by Area Directors throughout the country to gather input on Indian agriculture and agriculture related issues.

Testimony was presented a total of 224 times during these public hearings, with 174 comments specifically on irrigation. The testimony, both oral and written, was transcribed verbatim at all the public hearings and the record was kept open for two weeks following the hearings to provide an increased opportunity for tribal input. The comments on irrigation are summarized below, and incorporated into the body of this report, where appropriate.

Development

The largest area of concern, with 66 total comments reported in the testimony, was the poor condition of irrigation projects, and the need for additional development.

In this category, 24 Tribal Chairmen or their representatives requested rehabilitation and betterment of existing projects in poor condition. Eighteen indicated that the completion of existing projects or development of new projects should be a high priority. An additional eight individuals indicated that the lack of drainage on irrigated lands is among the major problems affecting the productivity of Indian irrigated lands today. Twelve tribes or individuals spoke of the need for assistance in on-farm improvements, or the use of wells and sprinkler systems for irrigation, and four indicated that water storage facilities are in poor condition and in need of repair to avoid flood damage to downstream areas.

Project Management

The second largest number of comments was received on the current administration of Bureau irrigation projects. In mixed reviews, 40 tribes or individuals presented testimony on the current administration of the Bureau Irrigation Projects.

Seven tribal representatives decried the apparently low priority placed on irrigation within the Bureau. Five more participants indicated that additional X-1000 account (construction) funding should be available to complete the projects, and an additional five asked for increased funding for irrigation in general. Reduced services to water-users, lack of project work plans, operation under archaic regulations, and application of off-reservation standards to reservation economies, were all cited as problem areas.

Another major concern was the time constraints on irrigation water-users. It was pointed out by six participants that growing crops need proper amounts of water at specific times, and that a one day delay in receiving irrigation water can have serious impact on crop yields and farmer finances. The general comments on this subject indicated that the Bureau has been unsuccessful in supplying irrigation water in a timely fashion in many instances.

A third major area of concern, under the broad heading of project management, is the setting of water charges and determination of project categories. Several individuals questioned the determination of payment category, and indicated that projects of similar type do not receive uniform treatment. Two indicated that operation and maintenance charges were too high to allow irrigators to earn a reasonable living. Two more indicated that high wages and year-round work schedules of irrigation project employees tend to inflate these costs.

The use of Pl 93-638 contracts, to allow tribes or water-user associations to operate the projects directly, was offered as a possible solution to high wages and O&M rates by four individuals. It was further suggested that the Bureau should first ensure that the project is in "good operating condition." One individual spoke against the long standing policy of transferring all responsibilities for a project to the water-users when it is completed, and suggested that the Bureau should re-establish many now defunct projects which were turned over in the past. Another decried the lack of input from the water-users themselves in establishing policies on their projects, and indicated that the Bureau did not listen or respond to their concerns.

Two representatives of the U&O tribes described the unsuccessful efforts that had been ongoing for three years by the Tribe and the water-users to contract for the operation and maintenance of the U&O irrigation project. They indicated that long delays in responses from the Bureau, arbitrary decisions, and the bureaucratic run-around had thwarted their efforts to date.

Water Rights

Indian water rights is a very critical issue throughout the Western United States, and 22 comments were recorded on this issue as it pertains to irrigation projects.

Thirteen tribes indicated that rehabilitation, completion, or development of Irrigation projects was the single most important method for tribes to protect their reserved water rights in upcoming negotiations or litigation. Landmark court decisions use irrigated or potentially irrigable acres as the standard for quantifying Indian Reserved Water Rights. Six more tribes stated that water supplies were currently inadequate or being depleted, which had negative afects both on the irrigation project and on potential water-rights. Three felt strongly that improved water management practices should be implemented by the irrigation projects to maximize benefit from existing supplies.

Land Management

Another major area of concern, with 18 irrigation-related comments, was land management and tenure as it affects, and is affected by, Irrigation projects.

In this category, eight representatives suggested that the long-term aspects of agriculture, as a vehicle for economic development and increased self-sufficiency on Indian lands, has been ignored. Comments received suggested that Irrigation, Land Leasing and Credit procedures in the Bureau restrict and discourage agricultural development. It was stated that agricultural production is not recognized by the Bureau as a primary means for achieving increased private investment and economic development in Indian Country. These problems, plus the high cost of land development, poor lease terms, short tenure periods, small tract sizes, and undivided heirship lands, were cited by 13 individuals as being the major contributors to the increase in idle lands in Indian irrigation projects.

Five additional individuals spoke specifically to the issue of damage caused by the increasing acreage of idle lands in irrigation projects. The lack of revenue to the tribal government, lack of income to individual landowners, increasing liens against the land as a result of unpaid O&M, ballooning noxious weed infestations, increased cost of reclaiming idle land, and the lack of operating monies for irrigation projects were all listed as current problems resulting from idle lands in the Bureau's irrigation projects.

Technical Assistance and Training

Requests for training, technical assistance, and educational opportunities, specifically related to irrigated farms, were voiced 16 times in the Public Hearings. Of this number, nine specifically requested a marked increase in the technical assistance available to individual irrigators and tribes in order to assist them in developing financially stable irrigated farms. Several Tribal Chairmen or their representatives requested improved technical assistance directly to the tribes so that they could better operate existing tribal enterprises composed of Irrigated lands. Another area of concern was provision of technical assistance, to prepare tribes or water-user organizations to contract, under PL-93-638, for the construction, operation, and maintenance of Bureau irrigation projects

A topic of universal interest mentioned in all the public hearings throughout the country is the need for increased educational and experience opportunities for Indian youth in the area of agriculture. Six Tribal Chairman mentioned the need to institute 4-H and FFA programs to increase exposure of Indian youth to the concepts and practices of irrigated farming.

Economic Development

A final area which received a significant number of comments relative to irrigation was economic development. Fourteen of the participants at the Public Hearings stressed irrigation as a means to achieve self-sufficiency and economic development.

Of this number, seven spoke specifically to the development of Tribal enterprises based on Irrigated lands, to create tribal income and employment opportunities for Indian people, and four spoke to the value of private irrigation districts scattered throughout Indian country as a stabilizing influence on Indian economic conditions. Two used the example of neighboring off-reservation irrigation projects as examples of economic development activities undertaken by non-Indians.

D. Legislative History

The irrigation program on Indian trust lands cannot be clearly understood without some perspective on the historical evolution of existing laws and regulatory authorities.

Federal policy in the irrigation program area has been established over the years on a piecemeal basis by enactment of laws that authorize irrigation projects and appropriate funds for their construction. Although this process has followed the same general trends as other Bureau resource programs, significant differences do exist. These differences may be attributed to the large capital expenditures which are often involved, the large areas of non-Indian lands which are included in Indian irrigation projects, and the previous national policies of reducing Indian Homelands by encouraging western migration and homesteading on reservation lands. The major portion of this authorizing legislation was drafted and passed during the Containment and Assimilation Eras when the Federal relationship with Indian Tribes was significantly different than it is today. Coupled with unspecified trust responsibilities which may or may not include irrigation functions, this results in extraordinary policy considerations.

Construction of early irrigation projects was generally financed by gratuity appropriations, and often launched with little regard for economic feasibility. These projects were undertaken as part of the Federal Government's program of instructing the Indians in the "arts of civilized life," which included agriculture. For those projects which required a large expenditure and which benefitted, in many instances, both Indian and non-Indian water-users, authorizing acts were passed by Congress which required reimbursement of expenditures.

However, there was no uniformity in the early legislation which required the recipients to pay for irrigation services. Sometimes the Indians benefitting from a project were required to pay all costs, sometimes they were not required to repay construction costs, and other times they were excused from repaying operation and maintenance charges. For example, the Act of March 1, 1907, (34 Stat. 1024, 1025), relating to the Fort Hall Project, provides that the Indian land owners shall pay no construction or maintenance charges until the land is leased for more than three years. In contrast, the Act of May 30, 1908, (35 Stat, 558, 559), relating to the Fort Peck Project, states: "The land irrigable under the system herein provided, which has been allotted to Indian in severalty, shall be deemed to have a right to so much water as may be required to irrigate such lands without cost to the Indians for the construction of such irrigation systems," but the Indians were required to pay maintenance charges.

During this period, Indians were not consulted prior to the United States Government taking action to construct projects; action that would later result in serious landowner indebtedness to the United States. This coincided with the western settlement period, during which the/ Reclamation Service was building diversion and distribution systems to deliver water and attract settlement to arable western lands. Some individuals were not particularly sympathetic to Indian people and used many methods to separate the Indian owner from the land. Realtors in cities adjacent to some reservations advertised in Eastern cities that land could be obtained inexpensively on the reservation. Homesteading by non-Indians, either as a result of the General Allotment Act or specific acts pertaining to individual reservations, added to the total acreage that was removed from Indian ownership. As a result, irrigation projects on Indian lands contain substantial acres owned and irrigated by non-Indians.

The policy of direct federal expenditure for Indian irrigation projects underwent a decided change as a result of the Act of August 1, 1914, (38 Stat. 582, 583). With the passage of this legislation, Congress changed its position on the reimbursable appropriations of specific projects, and required reimbursement of appropriated funds previously considered as gratuities. Construction, maintenance and operations charges were to be collected from the tribes on the basis of benefits received. Consequently, monies utilized to construct and operate Indian irrigation projects were obtained by drawing on tribal funds, or by making direct disbursement from the Federal Treasury to be reimbursed from the sale of lands within the reservation.

In some cases, individual tribal members, who received no irrigable lands in their allotment, protested against this loss of lands and expenditure of funds common to the entire tribe. Congress, subsequently, adopted legislation providing for the payment by the individual beneficiaries for the cost of the Indian irrigation projects.

The Act of May 18, 1916, (39 Stat. 141), provides for reimbursement of tribal funds expended for irrigation construction, and is quoted in part as follows: "That the tribal funds heretofore covered into the Treasury of the United States in partial reimbursement of appropriations made for constructing irrigation systems on said reservations shall be placed to the credit of the tribe and be available for such expenditure for the benefit of the tribe as Congress may hereafter direct." This has been accomplished only through specific legislation as requested by the individual tribes, but in at least one case, that of the Fort Belknap Reservation, it is reported that the tribal funds have never been reimbursed even after formal request. The act also provides that construction funds for Blackfeet, Fort Peck, and the Flathead Project are reimbursable, and that a first lien upon the land is reserved for unpaid charges.

The assessment and collection of previously expended construction and operation funds proved difficult or impossible, due to both the incomplete nature of a majority of the projects, and the discretionary clause which provided for collection only where the Superintendent determined that the Indians had the ability to pay. Therefore, the Act of February 14, 1920, (41 Stat. 408), made it mandatory that the Secretary of the Interior begin collection of the construction charges.

The retroactive provisions of this act met with strong opposition from the non-Indian water-users who had acquired former Indian lands in the projects. These lands were, in many cases, deeded to non-Indians with patents confirming that the lands were free of all encumbrances. The United States Attorney General held that collection of construction charges could not be accomplished in those cases where vested rights had been acquired through fee patent deeds. Additionally, the Solicitor of the Department of the Interior held that where no specific lien was created by act of Congress and recorded on the deed, the payment remained due from the former Indian landowner.

An additional act passed at that time, was the Act of February 14, 1920, (41 Stat. 415), which authorized the Secretary of the Interior to deduct monies from the proceeds of sale, leases, or other sources of revenues of Indians in order to collect fees to cover the cost of any and all work performed for Indian tribes or for individual Indians. The Snyder Act of November 2, 1921, (42 Stat. 208), further authorized the Bureau of Indian Affairs to, ". . . direct, supervise and expend such monies as Congress may from time to time appropriate . . . for extension, improvement, operation and maintenance of existing Indian irrigation systems and for development of water supplies."

In an effort to address some of the problems affecting non-Indian land owners who had acquired Indian lands which were within an Indian irrigation project, Congress passed the Act of March 7, 1928, (45 Stat. 210), which provided that "the costs of irrigation projects on Indian lands, and of operating and maintaining them where reimbursement is required by law, shall be apportioned on a per acre basis against the lands and collected by the Secretary of the Interior; and also that unpaid charges against lands shall constitute first lien thereon which shall be recited on any patent or instrument issued for the lands."

This act did not, however, fully quiet the opposition nor provide for uniform treatment of all beneficiaries. Non-Indian landowners who held clear title to their lands prior to February 1920, could not be required to repay their fair and equitable portion of the costs of the project. However, Indian land owners and their heirs were expected to fully repay the costs, and these costs became a first lien on the land. On some reservations, Agency Superintendents attempted to implement the collection policy by enforcing the Act of 1920, (41 Stat. 415). They took action forcing fee patents and the sale of Indian lands to recover irrigation costs, thereby taking thousands of acres of irrigated farmland out of Indian ownership.

In recognition of the inherent unfairness of the application of these previous attempts at collection of irrigation charges, the House committee on Indian Affairs stated: "The progress of many Indians is retarded by old debts held against them by the Government and incurred under circumstances which dictate adjustment as a matter of simple justice" and recommended passage of the Leavitt Act of July 1, 1932, (47 Stat. 564, 25 U.S.C. Sec. 386a). This law authorized the Secretary of Interior, "to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made," and which at the same time deferred the collection of all construction costs against any Indian-owned lands within any Government irrigation project, and provided that, "no assessments shall be made on behalf of such charges against such lands until the Indian title thereto shall have been extinguished, and any construction assessments heretofore levied against such land in accordance with the provisions of Section 386 of this title, and uncollected, are hereby cancelled."

Congress has, over the past 50 years, provided specific legislation for additional cancellation of some reimbursable charges. The Act of March 4, 1931, (46 Stat. 1519), provided for cancellation of certain reimbursable construction charges and unpaid irrigation operation and maintenance assessments against specified lands within the Gila River Indian Reservation. The Act of September 1, 1954, (68 Stat. 1099), cancelled charges for certain Indian lands within the State of Utah. Public Law 89-364, (80 Stat. 31), dated March 8, 1966, allocates construction costs against the total irrigable acreage in the Wind River Project in Wyoming according to the present land classification. It further provided for the cancellation of charges where a lien was not cited in the fee patents issued for lands that passed out of Indian ownership prior to March 7, 1928.

A. General Administration

The management of the irrigation projects is delegated from the Secretary of the Interior through channels to the Agency Superintendent or Project Engineer, who is designated as the "Officer-in-Charge." This individual is charged with performing work and taking action necessary for the project to provide maximum possible benefits while ensuring safe, economical, beneficial, and equitable use of water and the facilities.

The administrator of an Indian irrigation project must possess qualifications that are frequently different from those required of other irrigation project administrators. The basic qualification standards may be similar, due to the necessity of common scientific or technical education, however, the subsequent duties and responsibilities in administering Indian irrigation projects are not.

Unlike other Federal or private irrigation projects, Indian projects service or impact a variety of user groups and land ownership types, many of which hold special legal, legislative, or historical positions. Since these irrigation projects generally service both Indian and non-Indian lands inside and outside reservation boundaries, project policies and constraints remain unique, and may directly conflict with the objectives of various user groups.

The special requirements for administration of the Indian irrigation projects revolve around the extremely broad mandate of the Bureau of Indian Affairs. While Bureau irrigation employees must provide for the equitable and timely delivery of water through proper operation and maintenance of project facilities, they also serve as an agent of the Federal Trust Responsibility for protection of Indian resources, represent the Federal Government in its Government-to-Government relationship with Tribal governing bodies and, as Bureau employees, must embrace and promote the National Policy of Self-determination of the Indian Tribes.

In addition to these broad, and at times conflicting, mandates, recipients of irrigation services, as well as individuals and groups not directly associated with the projects, have differing views of the primary functions of the irrigation project. Water-users usually consider the delivery of water through the operation and maintenance of project facilities the primary function. Landowners may consider the trust protection of the Indian landowner's interest the primary function, in conflict with the policy of tribal self-determination. Tribes may view the responsibility as that of protecting tribal water rights (which may directly conflict with project water requirements), and federal officials may consider the responsibilities to be that of first protecting the federal interest. For example, in Audit number W-IA-BIA-12-86 the Assistant Inspector General for Audits indicated that the Primary functions of the "Project Engineers" "...include (1) calculating irrigation operation and maintenance assessment rates and (2) billing the water-users for the assessments." There is no mention of operating an irrigation project, delivering water, or providing engineering services in the Inspector General's synopsis of the project engineer's responsibilities.

Staffing

Project management structure varies from project to project, but generally the project's staff consists of an engineer/manager, office staff, and field crew, who manage water and power distribution systems. There are some cases where irrigation is being carried on by the tribes or individuals, without Bureau irrigation project involvement.

Table 1. SKILL CATEGORIES OF IRRIGATION AND POWER POSITIONS

CATEGORY	TOTAL POSITIONS	CURRENTLY FILLED
General Management	11	8
Professional	48	33
Civil & Electrical Technicians	37	29
Accounting & Clerical	96	71
Skilled Positions	463	370
Unskilled Positions	54	43
Total	709	554

The administration and operation of the Indian irrigation and power projects is provided by 709 positions in the Bureau. Of this total, 554 are filled with full and part-time employees and 155 are vacant due to budget constraints or seasonally reduced workload requirements. The occupied positions include 8 managers, 33 professionals, 29 technical staff, 71 accounting and clerical staff, 370 skilled blue collar workers, and 43 unskilled labors. Only one staff member is currently located in the Bureau's Washington office to provide national program direction and leadership.

Table 2. POSITION FUNCTION: GENERAL MANAGEMENT, IRRIGATION, OR POWER

CATEGORY	TOTAL POSITIONS	CURRENTLY FILLED
General Management	11	8
Total Irrigation Positions	494	383
Total Electrical Positions	204	163
Total	709	554

B. Financial Management

Due to the highly varied nature of the enabling acts which created the majority of the Irrigation projects in Indian country, the financial management of these projects is highly complex, and a key to affecting improvement.

The Bureau's Irrigation projects are financed in a manner which requires unique administrative considerations. Funding sources include both appropriated funds provided by Congress through legislation, and non-appropriated funds including collections from the landowner, water-user or other non-federal source.

Legislation authorizing Indian irrigation projects receiving appropriated funding contains language identifying the appropriations as either reimbursable or non-reimbursable. Of the 112 Indian irrigation projects constructed in the late 1800's and early 1900's, 73 are still operated by the Bureau and many are required by legislation to reimburse some or all of the appropriated monies to the federal treasury.

Laws relating to the payment of construction charges, operation and maintenance, have been passed at least 30 times affecting the separate projects. Three of these acts report all irrigation construction expenditures as non-reimbursable, five require repayment but don't specify the method of collection and twelve authorize the proceeds of sale of Indian lands to be used in partial repayment of construction charges.

In addition to the general language in the acts mentioned above, ten different acts were passed which provide for individual treatment of specific projects. Two acts require repayment of construction costs in 30 years and two require 20 annual payments for the same purpose. One act requires that reimbursable charges be paid back by using one-half of the annual "water charges;" another specifies that operational charges are not to be assessed unless the land is leased for more than three years.

A separate act specified that reimbursement of all charges for one project was to be made from land lease income, but excluded 8,346 acres (currently contracted at 8,847 acres) from all charges and 4,000 acres from lease charges in that project. Two acts passed in 1911 specify even odder terms. One states that the reimbursable charges will not be assessed as long as the allottee or his descendants maintain a homestead on the land, and the other states that only the allotted lands in the project will be subject to the charges, presumably excluding all other project lands from any cost whatsoever. The most recent specific act with a reimbursable clause states that charges are reimbursable "...within the capability of the land to pay..." a departure from previous legislation which spoke specifically to the ability of individual Indians to pay.

All the above projects are covered by the Leavitt Act of 1932, (47 Stat. 564), which defers collection of construction charges while the land remains in trust status.

Included in the sampling above are 33 Indian irrigation projects, including two districts no longer under Bureau control. These projects collectively represent more than 80% of the irrigated lands serviced by the Bureau. This brief synopsis is not intended to be a complete review; rather it is meant to illustrate the high level of diversity in the authorities which impact the financial management of Indian irrigation projects.

Operation and Maintenance Charges

Operation and maintenance (O&M) charges are levied against the acreage within each allotment, farm unit, or tribal unit that is designated as irrigable and to which irrigation water can be delivered by the project. Assessment rates are determined by dividing the cost of normal yearly operation and maintenance of the project by the number of designated assessable acres within the Indian irrigation project. Any proposed changes in these O&M assessment rates, after review and public comment, are published as a general notice in the Federal Register. The landowner or water-user is assessed on the number of irrigable acres owned or leased. The funds collected from the landowner or lessee are then utilized to operate and maintain the irrigation project.

Water-users or landowners are billed for O&M charges on those projects which are required to pay for all or any part of operation and maintenance costs. The Bureau program provides for appropriated funds to operate and maintain some of these projects on behalf of those Indian people who are financially unable to pay their assessments, and in those instances where the Bureau is allowed by legislation or court decree to provide these services free of charge.

In the instance that an Indian landowner is unable to pay the annual O&M charge for a particular irrigation season, the charge may be formally deferred by the Superintendent. This action then allows the use of reimbursable appropriated funds, if available, to continue maintenance of the system. When appropriated funds are used to supplement the O&M collections on behalf of Indians who are financially unable to pay, the deferred O&M charge becomes a debt due the United States until the debt is paid, or the land has been disposed of through a sale by the landowner, in which case all unpaid charges are to be taken from the proceeds of the sale. In recent years appropriated funds for this purpose have not been available, and the affected projects have been functioning without full operating budgets.

Project Categories

In an effort to adopt a uniform policy on the use of appropriated funding for irrigation operation and maintenance finances, the Bureau has administratively established six financial categories of irrigation projects. These categories are based on the amount of federal funds involved in the operation of the individual project and the requirements for repayment of the federal O&M contributions. The criteria utilized to determine the category of an irrigation project or tract of land is listed below.

1. **Category I** - These are irrigation projects that have been identified as being economically feasible where the landowners and water-users as a whole are generally financially able to pay the full cost. These projects are self-supporting, and water-users or the landowners are required to pay the full cost of operation. Any irrigation operation and maintenance charges which are not paid become a personal debt to the United States, constitute first lien against the land, and cannot be used to operate the project. Appropriated funds are not used for payments of assessments under this category, which consists of 12 projects and 63% of the total irrigated land base.

2. **Category II** - These are irrigation projects where the majority of the landowners are Indians and do not have sufficient income to pay the full annual operating costs. Because of the low productive capability of the land or poor economic conditions at these locations, the O&M assessment rates for the Indian water-users are based on the ability of the users to pay. In these cases the Indian water-user is assessed a portion of the annual O&M costs, with the remaining portion to be paid by non-reimbursable appropriations. When the land is used by non-Indians, full payment of O&M costs is required. Seven projects, comprising 4% of the irrigated land base, fall into this category.

3. **Category III** - Irrigated areas which do not represent economical units, such as subsistence garden tracts and tracts of a few acres, but which do provide Indian landowners with a means of supplementing their livelihood, are considered to be category three projects. Because of the low income of the Indian water-users on these irrigated areas and tracts, it is not economically feasible to assess landowners for the operation and maintenance costs. Accordingly, the operation and maintenance costs are covered by non-reimbursable appropriated funds and do not become a lien against the lands benefited. There are 43 projects in this category, covering about 12% of the total lands irrigated.

4. **Category IV** - Irrigation systems and reservoirs which are located within, and operated by, public and private irrigation districts or projects are referred to as Category IV. Assessments for operation and maintenance of the irrigation systems

and reservoirs serving these Indian-owned lands are levied by the irrigation district against the Indian landowners or water-users. Appropriated funds used for payment of these assessments are reimbursable and become debts due to the United States and liens upon the land, except for those payments that are non-reimbursable by legislation. Five projects, with 1.2% of the total irrigated land base, are included in this category.

5. **Category V** - These are irrigation projects operated by the Bureau at no cost to the Indian water-user as provided under legislation or court decree. There are 7 projects, comprising 11% of the irrigated land base, in this category.

6. **Category VI** - The Navajo Irrigation Project, which is currently under construction, is the only project which falls into this category. Reimbursement of construction charges as well as operation and maintenance charges are deferred pending completion of the various phases of this project. About 10% of the total Indian irrigated land will be in this project when it is completed.

Figure 1. Acreages in the Irrigation Project Categories.

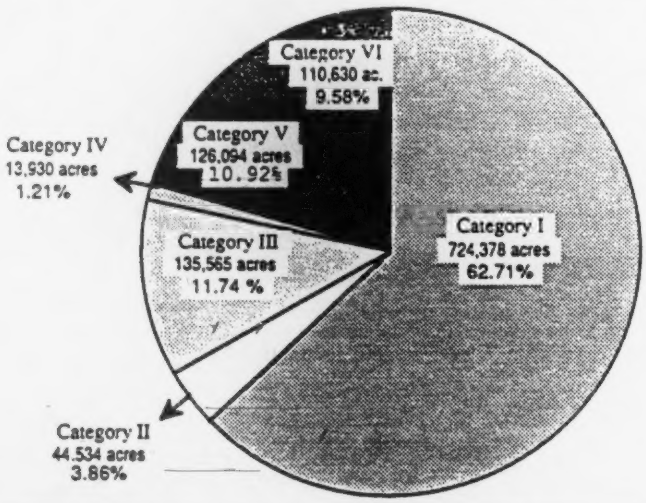


Table 3. - Indian Irrigation Projects listed by Category

Project Name	Total Acres In Project	Average Acres Irrigated	O&M Rate per acre	
CATEGORY I- 12 PROJECTS				
Blackfeet	53,499	38,463	$7.50	
Colorado River Irr.	107,558	60,329	$22.00	
Crow	46,839	39,893	$10.50	
Flathead	131,026	122,063	$13.60	
Fort Peck	24,700	19,173	$13.30	
Pine River	18,478	11,822	$5.25	
Salt River	10,600	7.435	$13.20	
Uintah & Ouray	79,346	50,814	$8.50	
Wapato	142,055	112,570	$27.00	
Wind River	55,512	39,893	$13.30	
Yakima (Ahtanum)	4,765	3,765	$7.00	
San Carlos Irrigation and Drainage District	50,000	34,108	$46.56	
Sub-Totals	724,378	540,328		
CATEGORY II - 7 PROJECTS			Indian	Non-In
Chui Chu**	3,445	290	$26.00	$250.
Duck Valley	12.000	9.396	$5.30	$22.
Fort Belknap	13.320	10.427	$6.25	$12.
Pyramid Lake	6,437	1,179	$3.60	$16.
San Carlos	2,326	527	$5.00	$17.
San Xavier**	2.026	296	$60.00	$100.
Walker Lake	4,980	1,846	$7.32	$15.
Sub-Totals	44,534	23,961		
**Not irrigated since 1982 due to lack of water				
CATEGORY III - 43 PROJECTS				
Acoma	2,302	575		
Camp McDowell	1,300	289		
Camp Verde	216	108		
Cochiti	1,864	318		
Fort Apache	7,885	873		
Fort McDermitt	3,500	2,950		
Gila Crossing	2,992	771		
Goshute	820	443		
Havasupai	204	155		

Table 3. - Indian Irrigation Projects listed by Category (Continued)

Project Name	Total Acres In Project	Average Acres Irrigated
CATEGORY III - 43 PROJECTS (Continued)		
Hoopa Valley	1,457	287
Hopi Misc.	86	20
Isleta	4,570	3,454
Jemez	2,105	677
Jicarilla	13.500	00
Laguna	3,211	287
Maricopa Colony	5,800	1,800
Mescalero	600	142
Moapa	591	468
Morongo	6,287	345
Nambe	745	265
Pala	4,903	260
Picuris	220	215
Projoque	185	36
Rincon	3,625	171
San Felipe	3,808	398
San Ildefonso	1,440	500
San Juan	4,800	1200
Sandia	3,418	1,054
Santa Ana	1,163	241
Santa Clara	2,500	950
Santo Domingo	4,300	879
Taos	6,000	3,272
Tesuque	800	600
Toppenish-Simcoe	14,051	2,144
Ute Mountain	12,050	00
Vaiva Vo	1,640	714
Warm Springs	1,292	282
Washoe Ranch	474	474
Western Shoshone		
-Duckwater	930	930
-Odgers Ranch	317	286
-South Fork	4,074	4,035
Zia	2,432	183
Zuni	2,600	1,305
Sub-Total	135,565	33,745

Table 3. - Indian Irrigation Projects listed by Category (Continued)

Project Name	Total Acres In Project	Average Acres Irrigated
CATEGORY IV - 5 PROJECTS		
Cocopah	431	232
Fallon	4,677	1,811
Fort Yuma	7,743	6,294
Northern Cheyenne	632	632
Yuma Homesteads	447	275
Sub-Total	13,930	9,244
CATEGORY V - 7 PROJECTS		
Fort Hall	47,063	42,595
Fort Hall - Minor Unit	5,760	2,178
Gila Bend**	1,725	314
Marchand	21,000	20,666
San Carlos Indian Wks.	50,546	20,020
Reservoir Operations		
Fort Belknap	NA	NA
Northern Cheyenne	NA	NA
Sub-Total	126,094	85,773
CATEGORY VI - 1 PROJECT		
Navajo Irrigation Project	110,630	51,879
Grand Total	1,051,736	744,930

**Project is no longer operational due to flood damage in 1983

Construction Funding
As used by the Bureau, the definition of construction funding is monies that have been appropriated by Congress for the construction, rehabilitation, or betterment of an existing Indian irrigation project.

Until the 1970's, the Bureau treated all appropriated funds for irrigation construction as reimbursable and assessed the pro rata cost of construction against the project lands. The court decision in Sholders vs. United States, (428 F, 2nd 1123, 9th Cir., 1970), found that the Secretary of the Interior cannot assess and collect construction charges on the Allers' lateral in the Pala Irrigation Project. The Federal District Court held that the assessments of the liens were improper because, since 1951, the appropriation acts for Indian irrigation projects have not contained language indicating that sums appropriated were to be reimbursed to the United States.

In response to that decision it has been the policy of the Bureau that any appropriated construction funds received for Indian irrigation projects are considered reimbursable when any legislation relative to that specific project has required reimbursement.

This policy has even been applied to the funds provided under the Jobs Bill of 1983, (PL 98-8, 97 Stat. 13). The Jobs Bill program was implemented to provide employment relief for the nation's work force. When money from that source was used in any manner associated with an existing Indian irrigation project which has a reimbursement requirement, the expense has become an additional reimbursable lien against the land. Of the total funds expended for this employment relief nationwide, only the Indian irrigation project landowners are required to reimburse the Jobs Bill program funds to the treasury.

Another inconsistency in National Irrigation Policy involves the Safety of Dams program authorized by the Safety of Dams Act of 1978, and administered by the Bureau of Reclamation. Under this program, state of the art improvements are made to existing, unsafe dams in order to meet current safety standards. When this work is accomplished on a non-Indian irrigation project, the funds expended are gratuities which are not reimbursable. When funds from the same source are spent for the same purpose on Indian irrigation projects, the full amount spent is reimbursible by the landowners.

The affect of the reimbursement clauses in legislation passed around the turn of the Century, the Leavitt Act of 1932, the Sholders' interpretation of those acts, and the resulting federal policy is that Indian lands within irrigation projects have become overly encumbered. In some instances, the debt owed to the United States now exceeds the total value of the land itself. Non-Indian landowners served by these projects are required to enter into a repayment contract for these services, which would not be required in a non-Indian project.

The fact that monies expended for construction, rehabilitation, or betterment of the Indian irrigation projects will become a lien on the land has only recently been understood by the tribal governing bodies and Indian land owners. For this reason, there is a reluctance on the part of tribal governments and land owners to request or support additional expenditures to improve existing irrigation systems. There are obvious disincentives for Indian or non-Indian landowners to support improvements to their irrigation projects when funding is provided through these programs.

Other Sources of Funds

Indian and off-reservation non-Indian irrigation projects may have sources of income in addition to those provided through direct appropriation or by the water-users themselves. The four Indian Power Projects provide funds from the sale of electrical power to supplement O&M collections for the operation of the associated Indian irrigation project, or, in the case of Flathead Indian Irrigation Project, to repay construction charges on behalf of Indian and non-Indian landowners.

The Flood Control Act of 1944, (58 Stat. 887), also known as the Pick-Sloan Missouri Basin Program provided that a portion of the proceeds from the sale of electrical power produced as a result of dam construction, would be used in constructing irrigation projects on the affected river system. These supplemental funds resulted in a reduced cost to the project landowners in the form of reduced construction repayment contracts. However, the Flood Control Act specifically omitted the Indian landowners from receiving these benefits by stating "... except that irrigation of Indian trust and tribal lands, and repayment therefor, shall be in accordance with the laws relating to Indian lands."

It was not until the WEB Rural Water Development Act of 1982, (PL97-273, 96 Stat. 1181) that the Pick-Sloan Missouri basin program became available to specific Indian irrigation projects. This legislation states: "Sec. 5. The Secretary of the Interior, in cooperation with the Department of Energy, is authorized to make available the Pick-Sloan Missouri Basin program pumping power to the Crow Creek, Cheyenne River, Omaha and Standing Rock Indian Reservation irrigation developments, and the Grass Rope Unit." Unfortunately, it is reported by the Cheyenne River Sioux Tribe that the increased charges of the local electrical cooperatives, to transmit the Pick Sloan power, offsets the dollar benefits from inclusion in the program.

In order for the aforementioned Indian reservations to be included in the Pick-Sloan Missouri Basin program, they were mandated to utilize the Bureau of Reclamation for planning and investigating the development and construction of the project. The procedure followed for this purpose is: (1) A land classification study to determine the suitability of the soils to sustain prolonged irrigation must be completed; (2) The proposed irrigated area is studied to determine if it can be adequately drained; and (3) The proposed project is studied to determine if it will be economically feasible to operate. In addition, formal procedures have been developed and are utilized by Reclamation to determine the repayment capability of an irrigation project which has requested construction funding or a rehabilitation and betterment project.

An attempt was made in the mid 1970's to develop standardized procedures similar to those used by the Bureau of Reclamation, to assess both soil suitability and economic feasibility on Indian irrigation projects. A committee was formed to review the Bureau of Reclamation procedures and incorporate those procedures into a Bureau of Indian Affairs Manual revision (55 BIAM). The draft manual revision, outlining the procedures to plan and investigate the feasibility of an Indian irrigation project or the rehabilitation of an existing irrigation project, has been completed. However, to this date it has not been approved.

C. Field Operations

Condition

Timely and adequate delivery of irrigation water is critical to the use of the land, the livelihood of the water-users, and is basic to the support of the local economy. The poor current condition, and need for additional development of Indian Irrigation projects, received the largest number of irrigation comments by tribes in the public hearings. Twenty-four Tribal Chairmen or their representatives requested rehabilitation and betterment of existing projects in poor condition.

Physical condition of the Indian irrigation projects varies widely. Some projects are well maintained, but many, in poor condition, have difficulty providing adequate irrigation water in a timely manner. The facilities have been maintained at various efficiency levels depending on the availability of funds, and the condition of the local economies in the various farming regions of the United States.

The lack of rehabilitation and construction funding is often cited as a contributing factor in the decline of these projects. Rehabilitation funding is programmed funds designated to repair, replace or reconstruct any part of an irrigation or power system that has deteriorated beyond the scope of routine maintenance operations. This source of funding was generally discontinued in 1980. Since that time any rehabilitation or betterment work has been financed by operation and maintenance collections.

The impact of the loss of rehabilitation and construction funds has been intensified by the reduction of appropriated operation and maintenance funding. Category II, III, and V projects have not received full payment of the federal share of O&M costs in recent years. Consequently, where the federal government is mandated to pay annual O&M charges, it is actually delinquent in its payments. This reduction in the federal contribution cannot be recovered through an increase in the charges to the water-users due to the enabling legislation for these projects. In these cases the projects are operating below cost-effective funding levels, with no options for improvement.

While it is easy to cite lack of funding as a causative agent in the reported decline in the physical condition of the Indian irrigation projects, it is important to note that these specific projects are not unique in their current physical deficiencies. Throughout the Western United States, irrigation projects which were designed and built in the early part of this century share similar shortcomings, and are in somewhat similar condition. This is undoubtedly due to several common characteristics of irrigation projects in this age group.

First, most of the projects built in the early part of this century were constructed using relatively primitive methods. These methods were much more dependent on minor irregularities in land contours than techniques employed in more recent projects, where modern machinery and technology has the ability to reshape the land as needed. The result is a longer, more convoluted delivery system, with slower flow rates, reduced efficiency, increased water loss, and increased mossing problems in the older systems.

Second, sites for early development were selected primarily on the criteria of water availability, not on the ability of the soils to sustain prolonged irrigation. As a result, some lands which are located within irrigation projects have soils which are simply not suited to continuous irrigation, and these soils have become unproductive. Saline seep is a major indicator of soil deficiencies which become apparent after irrigation is implemented.

Third, drainage systems were uniformly omitted from the early irrigation project designs. The result is an ability to get water on the land, but not get it off when enough water has been supplied. This has caused elevated water tables and soil saturation problems, contributed to brush and weed encroachment and greatly limited the types of crops which can be grown in some situations. Lack of drainage on irrigated lands is among the major problems affecting the productivity of Indian irrigated lands today.

Private projects and those administered by the Bureau of Reclamation face similar problems when of similar age. This point is best indicated by the fact that 15 of the 58 irrigation projects under the Bureau of Reclamation in the Missouri River Basin have undergone formal rehabilitation and betterment programs in the past ten years. Additionally, four projects are currently undergoing rehabilitation, and two are scheduled to begin these programs in the immediate future. No similar program exists for the 73 irrigation projects administered by the Bureau of Indian Affairs.

Completion

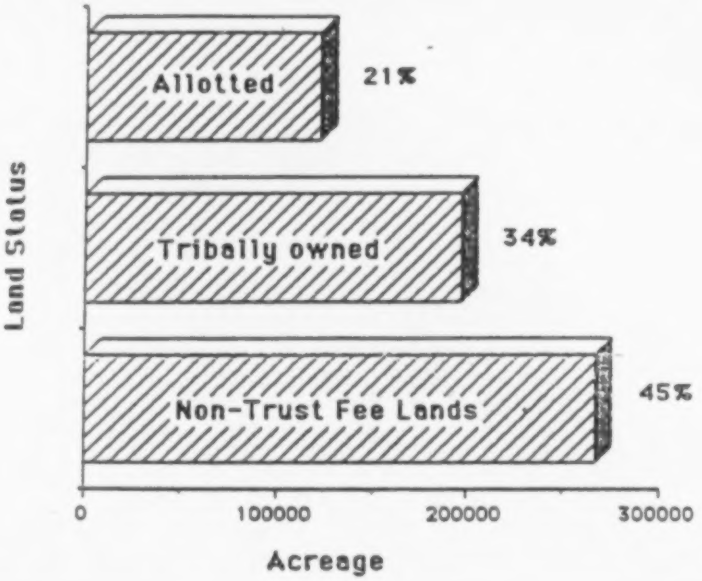
An additional situation in the Indian projects is that most projects are not technically complete, because there has been a hesitancy to fully develop each project to serve all project lands. In addition to provisions for Tribal contracting of operations and maintenance of irrigation activities under PL 93-638, there is a long standing policy of turning completed projects over to the water-users themselves. Section 1.1(A) of 55 BIAM Supplement #4, release 1, dated 11/14/70 states: "A. Policy: The Bureau shall encourage the assumption of the responsibility for the operation and maintenance of irrigation projects by organized water-users' organizations, but not forgetting that legislation is necessary before actual transfer of this responsibility for management can be accomplished." The congressional acts effecting the referenced turnover have traditionally contained language terminating Federal responsibility upon transfer of the districts.

At the request of Congress, an engineering conference was held in Washington, D.C. on January 21-28, 1960 to determine what was needed to effect transfer of irrigation functions from the Federal Government to acceptable water-users organizations. It was determined that complete studies and reports were needed to establish a program for completing existing irrigation projects, developing additional Indian resources requiring authorization by the Congress, and the rehabilitation and betterment of existing irrigation works in view of transferring the operation and maintenance activities of the projects. As a result, substantial inventories and completion plans were accomplished by the mid nineteen-sixties, and many small projects were subsequently turned over to the water-users with varying degrees of success. Most major Indian projects have not subsequently been completed, however, because funds to complete the projects were not appropriated, and there is no incentive for tribes or water-users to accept responsibility for these projects.

Land Ownership Status

The lands served by Indian irrigation projects include tribally owned lands, individually owned allotted lands, and non-trust fee patented lands. Due to the early history and perhaps the intent of these irrigation projects, this is the only Bureau program area which provides significant services to non-Indians. As indicated in the following figure, non-trust fee lands comprise 45% of the total lands served by the large Category I projects. Tribal lands with 34% of the total and allotted lands with 21%, together total 55% of the lands served, a relatively small majority.

Figure 2. Category I Landownership Status



Land Use Patterns

The actual land use patterns include even more non-Indian use than the landownership figures suggest. Although specific data is not available for inclusion in this report, on many projects a large portion of the allotted lands are in undivided interest status and therefore leased for crop production. Tribes without ongoing irrigated farming enterprises also lease their irrigated lands to provide a source of income to the tribal government and offset the O&M charges.

Under existing regulations for the leasing of trust lands, there is no preference to Indians for leases issued through the Bureau. Individual tribes may grant Indian preference only on tribally owned lands. Therefore all leases on the allotted lands are awarded to the highest bid on the open market. The result is that large acreages are under lease to non-Indian farmers, in direct conflict with the Homeland concept of Indian Reservations, and the policy to promote Indian use of Indian resources.

A compounding factor, which discourages Indian landowners from the use of their irrigated lands, is a quirk in the existing O&M collection procedures. During the years that a tract of land is unleased or the lessee fails to pay the O&M assessments, the unpaid annual O&M charges continue to build as a lien on the land and debt due from the landowner to the United States.

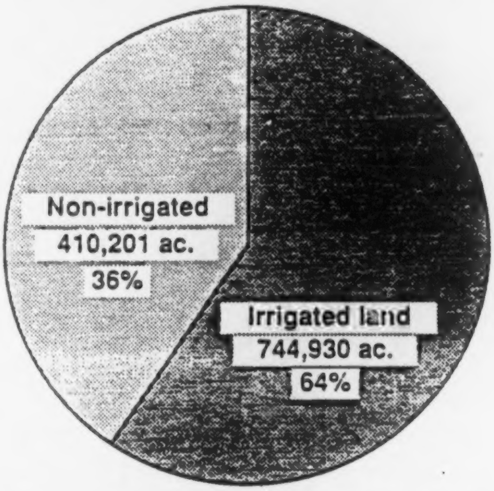
In an effort to keep the cropland in production, Indian landowners may attempt to farm their land directly when it is not leased. However, while a lessee must pay only one year's O&M charges to irrigate a field, the Indian landowner must pay not only the current year charges, but all unpaid charges from previous years, regardless of who was originally billed for these charges, or whether water was actually available or not. This requirement normally is a sufficient financial barrier to prevent the Indian landowner from using the land.

The inequities in this situation become even more pronounced when an individual Indian inherits or receives irrigated land as a gift, only to find that they now owe the United States more than the value of their lands. In addition, they generally cannot afford to farm the land if they lack the capital to retire all previously unpaid O&M assessments.

Idle Lands

A result of the a combination of factors, including those mentioned previously, is a large and increasing acreage of idle or uncropped lands within the existing Indian irrigation projects. The current estimate of idle irrigated land is 410,201 acres, or 36% of the total, which creates serious problems on the irrigation projects. Indian owners of idle land receive no lease or crop income and generally cannot pay O&M charges. This reduces project operating monies, contibutes to poor project condition, and further increases individual Indian indebtedness and encumbrances on trust lands.

Figure 3. Project lands, Irrigated and Non-irrigated

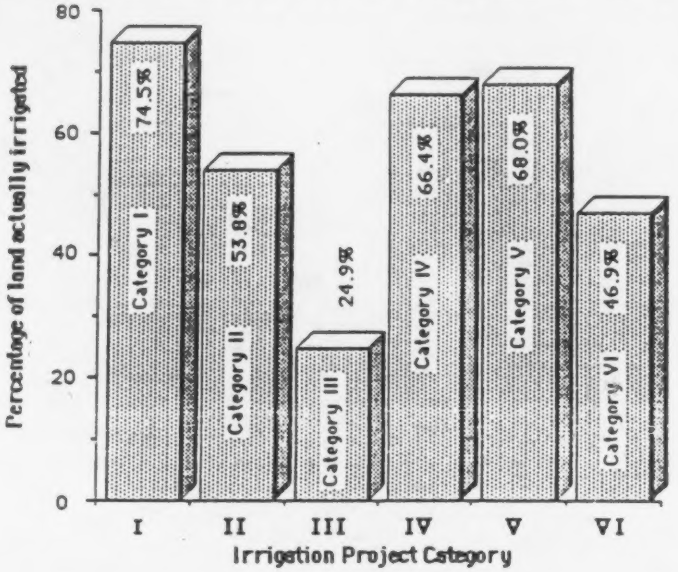


These figures are inflated by the inclusion of lands from uncompleted projects. These lands which are not yet serviced by carriage and distribution works cannot properly be classified as idle. For example, 59,000 acres of the Navajo Irrigation Project (a Category VI project) are not yet fully serviced by the distribution, system which is under construction. However, the acreages actually irrigated for each irrigation project category may provide insight on the project categories which have the greatest idle land problems.

The category having the smallest percentage of irrigated lands (25%) is Category III. These projects, which supply non-commercial small garden tracts, show a high percentage of unused lands, as expected from this land use type. The second lowest is Category VI, which is that category of projects which are currently under construction. However, serious problems exist when large acreages go unused in the commercial projects in Category I, II and IV.

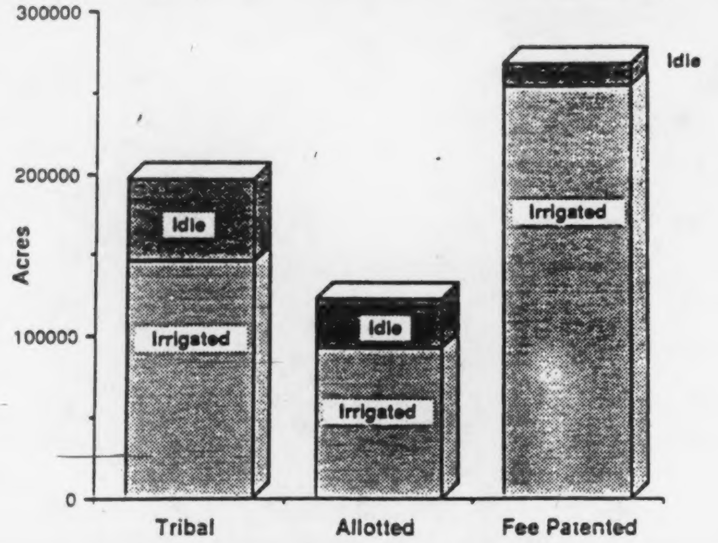
Figure 4.

Percentage of Project Lands actually irrigated, by Category



Since 1980, the sagging farm economy has had an adverse effect on all those who should be beneficiaries of Indian irrigation project lands. Farmers with limited capital have either quit farming or gone bankrupt. Those who were financially secure, in order to protect their holdings, have reduced their operations. Many farmers who previously leased Indian trust lands are no longer in a position to lease, which has been the single largest reason for the large amount of idle land in the commercial projects. Coupled with previously discussed barriers to Indian use of these lands this reasoning is supported by the fact that Indian-owned or tribal trust lands are much more likely to be idle than adjoining non-trust Fee Patented lands within these projects.

Figure 5. Category I - Idle Lands by Ownership Type



Unfarmed irrigated land commonly supports the growth and expansion of undesirable weeds, and provides a source for the spread of these weeds onto adjoining producing farm areas. If uncultivated for more than a year or two, these idle irrigated lands will begin reverting to their original state, which normally includes woody vegetation. Returning the land to productive farming after two or three years of abandonment is generally as expensive as the original effort to convert the land from native vegetation to crop production. This discourages potential lessees and Indian landowners from investing the time and money required to reclaim the land while paying the O&M and any rental or lease fees. The result is a trend of increasing idle acreages in these projects, with no incentives for reversing this trend.

FISH, WILDLIFE AND RECREATION

Generations of American Indians have developed lifestyles, cultures, religious beliefs and customs around their relationships with fish and wildlife. Historically, these resources provided food, shelter, clothing and tools, and were traded for a variety of goods. Fish, wildlife and outdoor recreation resources continue to provide a base of sustenance, cultural enrichment and economic development for many tribes, and help maintain tribal social structure and stability by permitting gainful employment in traditional and desirable occupations. Revenues generated through commercial fishing and recreational resource development programs help support a number of tribal governments.

Indian reservations throughout the country contribute significantly toward meeting the growing national demand for outdoor recreation, accounting for millions of user days annually. They provide habitat critical to the recovery of threatened and endangered species such as the bald eagle, peregrine falcon and grizzly bear, and necessary [illegible] the conservation of other nationally significant fish, big game, migratory bird and other populations.

Since the mid-1970's, tribes have emerged as co-managers of nationally and internationally significant fish and wildlife resources. In this capacity, tribes work closely with state, Federal, regional and international authorities in fulfilling joint management responsibilities assigned through court orders, statutes and other legal instruments.

The goal of the Fish, Wildlife and Recreation Program is to fulfill and execute the Federal Government's trust and rights protection responsibilities relating to fish, wildlife and recreational resources that are important to the sustenance, cultural enrichment and economic support of Indians, and to promote the conservation, development and utilization of these resources for the maximum benefit of Indians, now, and in the future. The goal incorporates four primary program objectives:

A. To protect hunting, fishing and gathering rights guaranteed to Federally recognized tribes by the United States through treaty, statute or Executive Order, including providing for the fulfillment of tribal co-management responsibilities associated with the exercise of such rights;

B. To develop full tribal capability and multi-disciplinary competence in the management of fish, wildlife and recreational resource programs through tribal contracting;

C. To develop and maintain a dynamic administrative environment which assures that fish, wildlife and recreational resource programs are conducted effectively, efficiently, and in compliance with established objectives, laws, regulations, court decisions, and other directives; and

D. To restrict reimbursing other federal agencies for technical fish and wildlife assistance to cases where tribes have not yet developed resource management capabilities, and where the Bureau is unable to provide the necessary assistance.

The Bureau will strive to establish and maintain policies and practices comparable to those of the U.S. Fish and Wildlife Service and other federal and state resource management agencies in protecting, managing and developing fish and wildlife resources held in trust by the United States for any Indian tribe or Indian individual. Fish, wildlife and outdoor recreation management shall be based on the best scientific information available. The Bureau shall insure that fish and wildlife resources are treated as an inseparable part of the broad unified conservation of soil, water, forests, rangelands and other natural resources. All Indian lands administered by the Bureau which contain fish and wildlife resources suitable for management and development shall have, with the consent and participation of the tribes, an active, progressive program for the management and conservation of fish and wildlife, consistent with other land uses.

The Bureau encourages the conservation, protection, enhancement and wise use of fish, wildlife and outdoor recreation resources for the continuing benefit of Indian people, and supports maximum tribal participation and capability development in the formulation and implementation of fish and wildlife codes, ordinances, regulations, harvest management programs, population and habitat management strategies, and other activities required for effective management.

The fulfillment of tribal co-management roles and responsibilities emanating from court orders, statutes and other legal instruments is an essential element of rights protection and, as such, shall require the same duty of care and vigilance by the trustee as the fulfillment of trust responsibilities. Co-management shall be regarded as those institutionalized decision-making processes participated in by two or more recognized authorities (co-managers) having proprietary interests in, responsibilities for or jurisdiction over the management and use of a fish and wildlife resource during some phase of its life cycle. Tribal co-management shall be regarded as the participatory role of tribes, as co-managers, in regional, national and international co-management processes. Fulfillment of co-management responsibilities requires direct tribal involvement in the development and implementation of a variety of technical and administrative functions, typically including conservation enforcement and judicial services programs, harvest management planning, population dynamics studies, stock-recruitment assessments, habitat inventories, data collection efforts, management information system development, public relations programs and inter-agency coordination and dispute-resolution efforts. The Bureau shall provide maximum flexibility to tribes in designing and implementing co-management programs on-reservation, on other trust/restricted lands and in ceded areas.

In dealing with complex off-reservation treaty hunting and fishing rights issues involving more than one tribe sharing a common geographic area, the Bureau supports the formation and involvement of intertribal organizations in addressing and negotiating complex resource issues with other resource management jurisdictions. The formation of intertribal organizations and joint tribal management programs is especially encouraged when complex inter-jurisdictional fish and wildlife resources of national and international significance are involved. Every effort shall be made to maintain and improve the effective functioning of intertribal fish and wildlife organizations and joint tribal programs in carrying out common co-management responsibilities.

The Bureau supports the contracting of program resources to tribes and intertribal organizations for the development of tribal capabilities and the implementation of programs necessary to manage fish, wildlife and outdoor recreation resources of interest. Programs and functions contracted to tribes, however, must not result in a diminution of trustee responsibility. The test of any self-determination contract is whether the programs or functions assumed by a tribe or consortia of tribes are performed with the same degree of care and vigilance as would otherwise be performed by the trustee. If there is any danger that the trusteeship will be debilitated through implementation of a tribal contract, the trustee shall have no recourse but to exercise its fiduciary responsibilities on behalf of all affected tribes, even if this means that the Bureau must reassume program functions and activities.

Tribal fish production and rearing facilities shall be operated and maintained to best fulfill the needs and responsibilities of Indian tribes, as well as to assist in the restoration of important depleted fish stocks and the mitigation of stock impairment caused by water-related development. Fish distributed from these facilities shall be of an appropriate size, species, strain, number and quality for the waters in which they are stocked.

Through passage of the Alaska National Interest Lands Conservation Act of 1980, Congress accorded Alaska Natives and other rural residents engaged in a subsistence way of life, a meaningful role in managing fish and wildlife resources of interest. The Bureau supports maximum participation by Alaska Natives in decision-making processes affecting the management of fish and wildlife resources utilized for subsistence purposes.

The Bureau supports reimbursing other Federal agencies for technical fish and wildlife services only in cases where tribes have not developed the capabilities to perform the services for themselves, and where the Bureau is unable to provide the technical assistance. In considering such reimbursable programs, the Bureau shall place high values on services which promote tribal self-determination and self-sufficiency, and which encourage the development of tribal capabilities and reservation economies.

Unlike other trust resource programs administered by the Bureau of Indian Affairs, the great majority of the Fish, Wildlife and Recreation (FWR) Program budget is contracted directly to Indian tribes and intertribal organizations. This approach has had much success in promoting the development of tribal fish and wildlife management capabilities and in affording tribes maximum flexibility to pursue self-sufficiency initiatives and reservation economy development.

Current Program

Indian tribes employed approximately 1,074 biologists, conservation enforcement officers and other personnel in administering FWR resource related programs throughout the country in 1986, of which 761 and 313 were reported as full-time and part-time positions, respectively. Included in this total were 285 conservation enforcement officers, 86 fishery biologists, 115 fisheries technicians, 18 fish hatchery managers, 74 fish hatchery technicians, 25 wildlife biologists, 34 wildlife technicians, seven fish and wildlife biologists, and seven outdoor recreation specialists. More than 400 additional personnel helped administer tribal FWR Program operations and served in such speciality positions as biostatisticians, judges and other court officials, public relations personnel, computer specialists, aquaculture specialists and environmental specialists.

Tribal Expenditures

Indian tribes expended a reported $4.8 million of their own funds in 1986 on FWR resource related activities, $1.5 million of which was expended by Phoenix Area tribes, and $1.3 million of which was expended for conservation enforcement programs.

Public Use

Indian tribes offered numerous public outdoor recreation opportunities with fishing, hunting, camping and water sports being among the most popular. Although public use surveys are sketchy and incomplete, it is believed that Indian lands accounted for more than 15 million days of public use in 1986.

Of the 72 reported public fishing programs, 29 were administered by tribes in the Southwest. Tribes in the Pacific Northwest and Great Lakes states managed 16 and 12 programs, respectively. Nine tribes in the Billings and Aberdeen areas, and five reservations in the Eastern Area also offered public fishing programs.

Of 61 reported public hunting programs, 21 were managed by Southwest tribes including 15 by tribes in the Phoenix area. Tribes in the Great Lakes, Pacific Northwest and Mountain/Plains areas offered 13, 12 and 10 public hunting programs, respectively.

Of the 88 Indian reservations which offered developed, primitive and/or wilderness camping opportunities to the public, 37 were located in the Southwest. Tribes in the Mountain/Plains, Great Lakes and Pacific Northwest areas offered 17, 14 and 13 public camping programs, respectively.

Tribes administered public trapping programs on approximately 40 reservations, including 17 in the Southwest, eight in the Great Lakes region, seven in the Great Plains region, and five in the Northwest. Other popular public outdoor recreational activities offered included boating, rafting, horseback riding, hiking, mountain climbing, tennis, golfing, swimming, picnicking and sightseeing. Indian tribes had established lodging accommodations on at least 37 reservations.

Regulation and Enforcement

The development of fish and game codes, of regulations governing tribal and public outdoor recreational use activity, of enforcement programs, and of judicial systems for handling violations are critical but often overlooked components of comprehensive resource management programs. Responses to questions posed about these conservation measures revealed that fish and game codes were needed on 54 reservations, and that more than 40 reservations required public or tribal hunting, fishing and trapping regulations. In addition, 63 on-reservation and 11 off-reservation enforcement programs were reportedly needed, as well as 40 tribal court systems.

NATIONAL SUMMARY OF CONSERVATION MEASURES

CONSERVATION MEASURE	IN PLACE	NEEDED	NOT NEEDED	STATUS UNKNOWN
Fish and Game Codes	93	54	9	48
Tribal Fishing Regulations	69	42	26	67
Public Fishing Regulations	72	42	30	59
Tribal Hunting Regulations	60	57	20	67
Public Hunting Regulations	61	54	34	55
Tribal Trapping Regulations	43	59	32	69
Public Trapping Regulations	39	49	46	70
On-Reservation C.E. Program	90	63	9	41
Off-Reservation C.E. Program	39	11	131	22
Tribal Court System	105	40	5	54

FEDERAL-LISTED THREATENED AND ENDANGERED SPECIES

OCCURRING ON INDIAN LANDS IN THE UNITED STATES

	On Tribal Lands		
Category	Endangered	Threatened	Total
Mammals	6	1	7
Birds	9	0	9
Reptiles	0	1	1
Amphibians	0	0	0
Fishes	7	4	11
Snails	0	0	0
Clams	0	0	0
Crustaceans	0	0	0
Insects	0	0	0
Plants	9	3	12
TOTAL	31	9	40

Wildlife and Parks

		FY 1988 Enacted To Date	FY 1989 Base	FY 1989 Estimate	Inc.(+) Dec.(-) From 1988	Inc.(+) Dec.(-) From Base
Central Office Operations:	$	400	398	398	-2	--
	(FTE)	(2)	(2)	(2)	(--)	(--)
Field Operations:						
Special Fish Management Programs	$	11,686	11,793	7,374	-4,312	-4,419
Tribal Management/ Development Projects	$	1,227	1,246	1,426	+199	+180
Fish Hatchery Maintenance	$	857	857	--	-857	-857
FWS Technical Assistance	$	370	382	1,682	+1,312	+1,300
	(FTE)	(10)	(10)	(30)	(+20)	(+20)
Total, Wildlife & Parks	$	14,540	14,676	10,880	-3,660	-3,796
	(FTE)	(12)	(12)	(32)	(+20)	(+20)

Current programs provide valuable and diverse fishing, hunting and outdoor recreation opportunities throughout the country, accounting for millions of recreational use days annually. Tribal fish hatcheries account for approximately 25 percent of the steelhead and 17 percent of the salmon propagated in western Washington, and for the production of tens of millions of walleye annually in the Great Lakes states. Species which receive management assistance because they are listed as threatened or endangered include the bald eagle, grizzly bear, black-footed ferret, Lahontan cutthroat trout, cui-ui lakesucker and peregrine falcon.

The Wildlife and Parks activity supports nine professional biologists assigned to the program. Tribal programs contracted through the Bureau provide for most of the on-the-ground work. The central office provides contracting officers and other Bureau personnel with technical advice essential to effective administration and monitoring of the many fish and wildlife management program activities.

Central Office Operations ($398,000; FTE 2): Professional personnel in the central office are responsible for establishing program goals, objectives, policies, strategies, and procedures necessary for effective and efficient program administration. The staff coordinates program planning, assists in budget formulation and execution processes, proposes systems for the effective delivery of program services, establishes program evaluation procedures and serves in a program oversight capacity. Central office staff also coordinates program responsibilities among area offices, agencies, tribes and intertribal organizations; analyzes policy and legislation; prepares briefings and issue papers; responds to information inquiries; conducts special projects; performs internal control reviews for potential waste, fraud and abuse; and provides expertise and advice to the Bureau's executive managers. The staff provides liaison with other federal and state agencies, participates in national and international meetings and negotiations, and assists in the overall management of trust responsibilities.

Field Operations ($14,278,000; FTE 10):

Special Fish and Wildlife Management Programs ($11,793,000; FTE 0): A number of court cases decided in favor of Indian treaty hunting and fishing rights have resulted in increased attention to nationally and internationally significant fish and wildlife resources in ceded off-reservation areas. These resources typically fall under the jurisdiction of a variety of tribal, state, regional, federal and international management entities and serve the needs of a variety of interest groups. Under management standards prescribed by statute and federal courts, these resources are protected and Indians roles and responsibilities in utilizing and managing them are assured through complex interjurisdictional programs aimed at assessing stock levels, establishing allowable annual harvests, and determining the population dynamics and stock/recruitment parameters of important stocks.

This program assists four intertribal organizations (Northwest Indian Fisheries Commission, Columbia River Intertribal Fish Commission, Great Lakes Indian Fish and Wildlife Commission, and Chippewa-Ottawa Treaty Fishery Management Authority) and their member tribes in the Pacific Northwest and the Great Lakes states in carrying out resource management roles and responsibilities. These organizations are involved in important national and international co-management activities. These intertribal bodies represent effective and efficient mechanisms for serving member tribes in treaty rights negotiations and implementation programs involving complex inter-jurisdictional resources. The program also assists the Klamath Tribe in Oregon in the protection of treaty hunting, fishing and gathering rights.

Western Washington Fisheries Management ($3,132,000; FTE 0): The Boldt Decision of 1974 in U.S. v. Washington reaffirmed that Stevens Treaty tribes in the State of Washington hold a valid treaty right to fish in all of their usual and accustomed places and upheld the position that the affected tribal governments must participate in the management of resources involved. This decision prompted the establishment of the Northwest Indian Fisheries Commission (NWIFC) in 1975 by the treaty fishing tribes of western Washington. Appropriated funds are contracted to the NWIFC to coordinate intertribal efforts in fulfilling tribal resource management responsibilities and to facilitate coordination with other management jurisdictions.

The NWIFC is directed by Commissioners who represent all treaty tribes in the case area. Of this amount, $858,000 is used to coordinate the efforts of tribal biologists, hatchery personnel, computer specialists and managers in formulating harvest management, population assessment, stock enhancement, fish tagging, and data gathering programs. The NWIFC serves as spokesman for the member tribes on fishing issues and has the authority to represent them before state and federal agencies.

Columbia River Fisheries Management ($1,887,000; FTE 0): Decisions in U.S. v. Oregon reaffirmed the rights of the four Columbia River Basin treaty tribes (Yakima, Umatilla, Warm Springs and Nez Perce) to a fair share of the fisheries resources. The Columbia River Intertribal Fish Commission (CRITFC) serves as a coordinating body for the four tribes. Appropriated funds will be contracted to the CRITFC to coordinate intertribal efforts in fulfilling tribal resource management responsibilities and to facilitate coordination with other management jurisdictions. The CRITFC is pursuing an active policy and technical role in the management of the Columbia River System. Substantial co-management of the fisheries resource is required by federal court order and federal law through a multi-state, intertribal and federal agency network. Maintenance of tribal fishery programs allows the tribes and the states to jointly manage and regulate Indian and non-Indian fisheries within the Columbia River Basin. The funds include $79,000 for fish tagging efforts.

The CRITFC staff of hydrologists, biologists, policy analysts, law enforcement officers, and administrative personnel promotes a "gravel-to-gravel" management philosophy for salmon and steelhead, requiring management involvement through the entire life cycle of the fish. Extensive efforts are directed toward rebuilding upriver runs that have been depleted by overharvest, habitat degradation, and hydropower and flood control development. The CRITFC coordinates with operators of the 13 mainstream Columbia/Snake River dams to facilitate upstream and downstream fish passage, and has been designated coordinator for the tribes in implementing the Water Budget Program. The CRITFC Enforcement Program employs a full-time staff of 15 patrol officers and dispatchers to enforce tribal fishing regulations.

Klamath Conservation Program ($523,000; FTE 0): The Klamath Tribe of Oregon, retains hunting, fishing and gathering rights under the Treaty of 1864. A 1981 consent decree and order (Civil No. 73-155) identifies tribal responsibilities for the conservation and management of fish and wildlife resources through an agreement between the tribe, the state of Oregon and the United States. A 1985 decision by the Supreme Court in Oregon Department of Fish and Wildlife v. Klamath Indian Tribe, involved the exercise of hunting and fishing rights on approximately 621,000 acres of ceded lands, as per the 1901 Cession Agreement between the tribes and the U.S. Government. Although the court held that the tribe's exclusive right to hunt and fish on lands reserved in the 1864 treaty did not survive as a special right to be free of state regulation in the ceded lands that were outside the reservation after the 1901 agreement, tribal conservation and enforcement efforts are still needed on the 1.1 million acre former reservation. The Klamath Tribal Executive Committee, as the governing body of the Klamath Tribe, is responsible for implementing the tribe's treaty rights and conservation program. The Klamath Indian Game Commission assists in planning, coordination and implementation of biological, conservation enforcement, liaison and administrative aspects of the program. The $311,000 will support staff to carry out co-management responsibilities, in cooperation with state and federal resource management authorities.

Voigt Case Area Management ($2,654,000; FTE 0): In 1982, six Bands of the Lake Superior Chippewas not involved in the U.S. v. Michigan case, but with commercial fishing rights on the Great Lakes, formed the Great Lakes Indian Fish Commission. In 1984, the "Voigt" tribes joined with the Great Lakes Indian Fish Commission forming the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), after the Seventh Circuit Court of Appeals reaffirmed reserved rights of several Bands of Lake Superior Chippewas to hunt, fish, trap and gather on public lands and waters ceded to the United States under the Treaties of 1837 and 1842 (Lac Courte Oreilles v. Voigt, 1983). The GLIFWC provides an intertribal mechanism for implementing the Voigt decision through securing of technical biological expertise, development of sound natural resource management plans, development of hunting and fishing regulations, and strengthening of the tribal enforcement capability and court system. The Commission also affords member tribes the opportunity to negotiate with Michigan, Minnesota, and Wisconsin, in co-managing fish and wildlife resources as a unified entity.

By sharing the expertise available, the Commission provides substantial improvement in the overall efficiency of the tribes to manage and regulate the use of fisheries resources of the Great Lakes, and of inland fish and wildlife resources of the Great Lakes states.

Appropriated funds will be contracted to the GLIFWC to coordinate intertribal efforts in fulfilling tribal resource management responsibilities, and to facilitate coordination with other management jurisdictions.

Michigan (Great Lakes) Fisheries Management ($1,139,000; FTE 0): In 1981, the fishing rights of three Michigan tribes covered by the Treaty of 1836 (Sault Ste. Marie, Bay Mills and Grand Traverse) were affirmed in federal court. Also in 1981, the three tribes established the Chippewa/Ottawa Treaty Fishery Management Authority (COTFMA). The purpose of COTFMA is to provide uniform joint regulations governing tribal fishing activities, act as a coordinating body for enforcement activities, coordinate initiatives regarding enhancement of the fishery, and provide a forum for resolving policy issues among the tribes. The COTFMA is advised on technical fishery matters, fishing regulations, harvest and status of the fishery stocks by the joint Intertribal Fisheries and Assessment Program. This program performs stock assessment and research studies; recommends harvest quotas; prepares data for negotiations/litigation; and works with other tribal, state, federal and academic biologists throughout the Upper Great Lakes area. A joint biological committee, the Tripartite Technical Working Group, consisting of biologists from the Intertribal Fisheries and Assessment Program, the State of Michigan and the Fish and Wildlife Service, assesses the status of important fish stocks, and establishes annual Total Allowable Catches for use by the State of Michigan and COTFMA in regulating fisheries. Tribes also participate on the Lake Trout and Chub Technical Committees of the Great Lakes Fishery Commission, established by the treaty between the United States and Canada for Great Lakes fisheries restoration purposes. Appropriated funds will be contracted to the COTFMA to coordinate intertribal efforts in fulfilling tribal resource management responsibilities and to facilitate coordination with other management jurisdictions.

In 1985, a negotiated fisheries agreement, signed by all parties to the U.S. v. Michigan litigation, was formalized through federal court action. The agreement provides for fisheries zonation plans for Lakes Superior, Michigan, and Huron; a fisheries enhancement program; further development of cooperative management measures; expanded conservation enforcement programs; a tribal economic development program; and a comprehensive lake trout management program.

U.S./Canada Pacific Salmon Treaty ($2,458,000; FTE 0): Through representation on the Pacific Salmon Commission and panels created by the United States/Canada Pacific Salmon Treaty implementing legislation of 1985, the Northwest treaty tribes apply their management expertise in assessing and rebuilding salmon stocks of mutual concern to both countries. The treaty commits each country to prevent over-fishing, provides for optimum production, and creates a national and international forum through which cooperative management of salmon stocks can occur. The United States' obligation to implement the treaty includes providing support in the areas of management, administration, information collection/analysis and enhancement.

Of the total, $2,395,000 will be contracted to the Columbia River Intertribal Fish Commission and the Northwest Indian Fish Commission to carry out the program proposed by the Pacific Salmon Commission. Programs to be conducted include inseason management, data-sharing, stock identification, and stock monitoring, focusing on salmon stocks originating in U.S. waters and intercepted in Canadian waters. Also included is $63,000 for a salmon tagging project at the Tamgas Creek Fish Hatchery in Metlakatla, Alaska.

Tribal Management/Development Projects ($1,246,000; FTE 0): In accord with Indian self-determination precepts, the Bureau has shaped a Fish, Wildlife and Recreation Program which promotes the development of tribal fish and wildlife resource management capabilities and affords maximum flexibility to tribes in pursuing reservation economic development. Through P.L. 93-638 contracts executed by the Bureau, tribes in the Pacific Northwest, Great Lakes states and elsewhere have assembled competent staffs and developed comprehensive programs for conserving, managing and developing Indian fish and wildlife resources, for fulfilling tribal resource management responsibilities assigned through court order and statute, and for interfacing with a host of state, regional and international jurisdictions in addressing the challenges of resource management.

Despite the fact that the great majority of wildlife and parks funds have been contracted to tribes in recent years, many tribes have not developed the capabilities to manage their resource bases. Several tribes continue to depend on federal programs for the delivery of fish and wildlife services; and on many reservations with fish and wildlife resource values and potentials, management programs are inadequate or lacking.

Funds will be applied to develop the professional expertise and multi-disciplinary competence of tribes and intertribal fish and wildlife organizations in expanding their reservation economies; in creating job-producing and income-generating programs through the development of fish, wildlife and outdoor recreational resources; and in reducing reliance on federal technical assistance programs. Funds are also directed toward improving the ability of tribes with common resource interests to better coordinate their efforts in dealing with other resource management jurisdictions, and toward achieving self-sufficiency among tribes in all phases of resource management and development.

These funds will be used as follows:

Northwest Indian Fisheries Commission - To develop a fish health diagnostic capability and operation to serve the needs of western Washington State tribes for disease-free certificates involving fish released from tribal fish hatcheries ($150,000); and continuation of shellfish investigations to evaluate harvest potentials ($50,000).	$200,000

Native American Fish and Wildlife Society - To support the efforts to educate tribes on how to develop their resource bases and implement biologically sound resource management and development programs.	135,000
Penobscot Nation - To develop tribal capabilities in managing Atlantic salmon and other fish and wildlife resources.	80,000
Blackfeet Reservation - As directed by Congress, $120,000 was provided to assess grizzly bear status on the reservation and to develop and implement management strategies in conjunction with the National Grizzly Bear Recovery Plan and $100,000 to establish a tribal fish and wildlife management program.	220,000
Nez Perce - To continue the wildlife management program established in FY 1987.	100,000
For four tribes: $49,000 each to Crow Creek Sioux, Devils Lake Sioux; Crow; and Northern Cheyenne tribes to establish or support tribal fish and/or wildlife biologist positions which will allow the tribes to develop their resource management capabilities and reduce reliance on federal technical assistance programs. The lack of professional biologists on the tribal staffs of reservations that support valuable fish and wildlife resources and public recreation programs has greatly hindered the progress these tribes have been able to make in developing their reservation economies through the expansion of public fishing, hunting, camping, and related programs. Development of professional staff would allow the tribal governments to begin inventorying fish and wildlife resource populations and to use such data in planning and implementing sound resource management and public use programs.	196,000
Navajo - To develop tribal capabilities in managing fish and wildlife resources and related public use programs on this 14 million acre reservation.	90,000
Zuni - To establish a fisheries management capability for the tribe, thereby allowing the tribe to develop the potential of its resource base for economic gain.	80,000
Cherokee - To develop fish hatchery management capabilities of the tribe, allowing for the expansion of public fishing programs which are dependent on the stocking of catchable rainbow trout.	75,000

Lower Brule - To expand tribal capabilities in managing fisheries and wildlife resources, and related public fishing and big game hunting programs.	70,000

Technical Assistance - Fish and Wildlife Service ($382,000; FTE 10): This is the estimated amount of funds to be reimbursed to the Fish and Wildlife Service (FWS) for facility operations serving tribes which are not yet able to perform such services for themselves. As tribes develop the capabilities to assume such programs, funding will be transferred to the tribes. Specific services to be provided and Indian reservations to be served will be described in a Memorandum of Agreement (MOA) negotiated annual between the two agencies, and in sub-agreements negotiated between Bureau area offices and FWS regional offices. Facilities projected to receive operations funding under the MOA include the Quinault hatchery, which supplements efforts of federal and state agencies involved in the enhancement of Pacific Northwest salmonoid resources, and the technical assistance offices located at Vernal, Utah; Valentine, Nebraska; and Kalispel, Montana, which serve tribes requiring varying degrees of training and assistance in developing fish and wildlife management programs and capabilities. If one or more of the tribes receiving assistance from the FWS develop the capabilities to assume control of the program by FY 1989, a portion of the funds from this account may be transferred to them to support those tribal efforts.

In accordance with Congressional direction, the Bureau will work to have the services performed through each facility contracted to the affected tribes as soon as possible.

Fish Hatchery Maintenance ($857,000; FTE 0): In FY 1988, Congress directed the transfer of six facilities formerly funded through the interagency memorandum of agreement between the Bureau and the Fish and Wildlife Service (FWS) to the FWS budget, provided that associated program operations be contracted to the affected tribes when the majority of affected tribes being served by each facility so requests, and that the savings realized by the Bureau from such transfer be made available for cyclical-maintenance of tribally-owned hatcheries. The Bureau has established uniform definitions and ranking criteria for prioritizing cyclical maintenance projects proposed by the tribes.

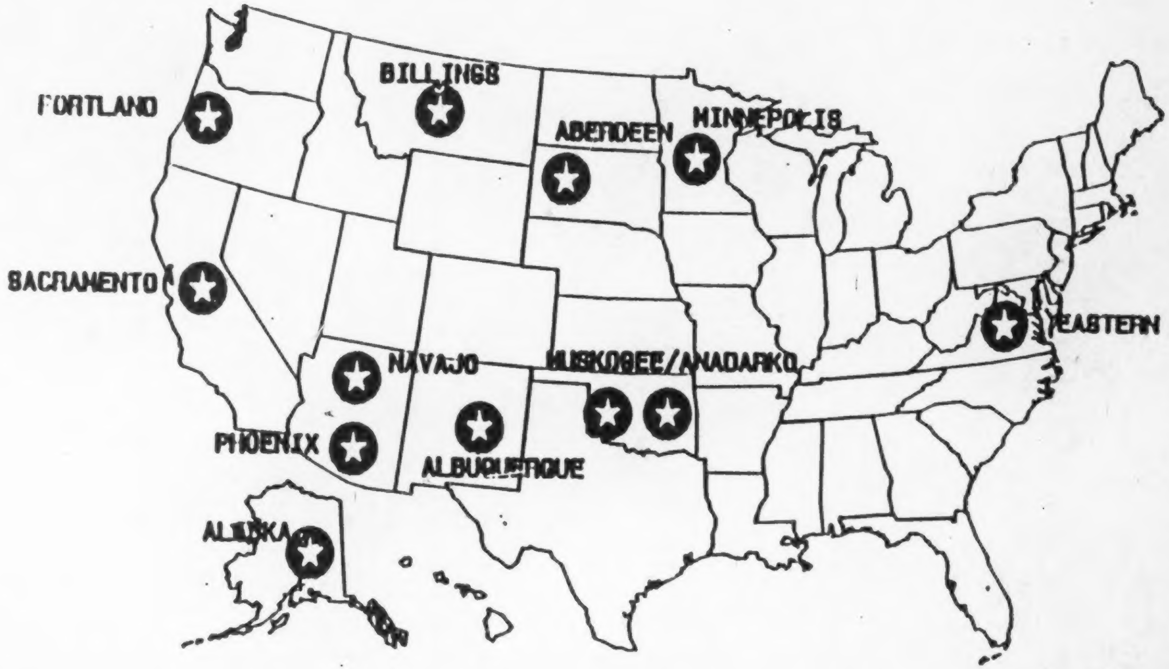
The definition established for cyclical maintenance is work that is required at periodic intervals (painting, paving, re-roofing, equipment servicing, etc.) to prolong the life of facility components and associated equipment, and to prevent the need for premature replacement and repair. Criteria established for ranking maintenance project proposals submitted by the tribes are as follows: (1) health, safety and security factors; (2) water quality compliance; (3) economic benefits and values; (4) rights protection and co-management responsibility fulfillment; and (5) resource enhancement and restoration. Funds will be distributed for those projects ranked highest by the Bureau's area office and central office staffs.

FWS Technical Assistance (+$1,300,000; FTE +20): This increase incorporates a transfer of $857,000 from the Fish Hatchery Maintenance account and an additional increase to support operations at the facilities transferred to the U.S. Fish and Wildlife Service's budget by the Congress in FY 1988. Operations of these facilities and the four other facilities retained by the Bureau in FY 1988 will be supported through a single interagency memorandum of agreement with the FWS. In FY 1989, the Bureau will begin the transition to tribal contracting for these programs, consistent with Congressional direction that these facilities should be managed by the affected tribes when the tribes are ready. The following table compares BIA's FY 1989 request to the funding contained in the FWS budget for FY 1988 by facility.

Facility	1988 level (FWS)	1989 Level FWS-MOA	Tribes	Total
Williams Creek/Alchesay	539	539	0	539
Mescalero	253	253	0	253
Parker	108	50	58	108
Pinetop	213	100	129	229
Lander	171	171	0	171
TOTAL	1,284	1,113	187	1,300

Many of the tribes being served by these facilities have expressed interest in contracting for the program operations. For an orderly transition to begin, the Bureau in FY 1989 will use $187,000 to contract directly with several tribes being served by the Parker and Pinetop offices. The tribes affected are Colorado River, White Mountain Apache and San Carlos Apache. Funds will be used for tribal staff and programs. These staff will serve as liaison between the FWS and respective tribes.

BUREAU OF INDIAN AFFAIRS
AREA OFFICES


PORTLAND
BILLINGS
ABERDEEN
MINNEAPOLIS
SACRAMENTO
EASTERN
NAVAJO
MUSKOGEE/ANADARKO
PHOENIX
ALBUQUERQUE
ALASKA

Quinault Indian Nation
POST OFFICE BOX 189 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (206) 276-8211

TESTIMONY OF JOSEPH B. DELACRUZ
PRESIDENT, QUINAULT INDIAN NATION
SUBMITTED TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SPECIAL COMMITTEE ON INVESTIGATIONS
JUNE 8, 1989

On behalf of the Quinault Indian Nation, I am pleased to have the opportunity to present the problems and opportunities facing the management of the natural resources of the Quinault Indian Reservation. The Quinault Indian Reservation, situated on the Pacific Coast of the Olympic Peninsula in the State of Washington, consists of over 200,000 acres of forest lands. The management of our forests and other natural resources provides the focal point of my testimony.

The Quinault people understand that all the plants and animals which comprise and share the environment are interrelated; the forests, our river systems, the wildlife and our people are all part of the whole. We have recognized that our way of life cannot continue without prudent stewardship; we know that short-term economic benefits gained from the harvest of our resources must be accompanied by adequate investment to insure that there will be a future.

QUINAULT NATION'S FORESTRY MANAGEMENT PROGRAM - RESPONSE TO TRIBAL CONCERNS AND TRIBAL GOALS

The Quinault Nation has long realized that the economic and social well being of its people depends upon the natural resources of the reservation and their prudent management. As you may know, for the last two decades the Quinault Nation has made a concerted effort to establish its own resource management programs in response to concerns over the BIA's management practices.

The Quinault Nation believes that the BIA, as the trustee of our resources, has not been adequately concerned about investing in our forests to insure their continued productivity or the relationships between our forests, rivers, fisheries, and wildlife.

DEVELOPMENT AND SUPPORT OF QUINAULT NATION'S FORESTRY MANAGEMENT PROGRAM

Under the BIA's management, vast areas of pristine conifer forest were transformed into underproductive lands, fisheries and wildlife habitat was severely damaged, and almost no effort was being undertaken to develop the potential productivity of our resources. We recognized proper management of our Reservation's natural resources would hold the key to the future of our people as it had for thousands of years. We were aware investment in proper forest management would improve the productivity of our lands, enhance our dwindling fish and wildlife resources, and diminish our dependency on social welfare programs. Increased productivity of our resources would provide employment opportunities, maintain supplies of traditional foods and cultural materials, and improve our capability to provide essential government services. But we saw little in the BIA's management approach to offer even the faintest glimmer of hope that this potential could be realized.

Countless attempts to question the BIA's management policies and improve the condition of our resources proved fruitless. Finally, after concerns over the continuing devastation of our Reservation's resources became overwhelming, the Quinault Allottee's Committee was created to pursue a mismanagement suit against the BIA. After nearly two decades of costly litigation, that suit, known as Mitchell v. U.S., is yet to be settled.

Our experience at Quinault was not unique. In FY 1977, Congress responded to tribal and BIA complaints regarding an accumulating backlog of Indian forest lands requiring rehabilitation by establishing a ten-year forest development program.

As part of its initial appropriation, Congress specifically earmarked $475,000 per year for the Quinault Management Program as a pilot project. The Quinault pilot project was designed not only to begin to address the rehabilitation of lands requiring silvicultural treatment, but also to serve as an example of a tribally directed effort to establish a balanced and integrated approach to the management of our Reservation's forest resources.

Congressional earmarking of forestry development funds in the mid-1970's enabled the Quinault Nation to establish a professional forest management organization which employs computer technology, forest and soils inventories, and silvicultural prescriptions to complete field activities such as slash treatment, site preparation, reforestation, genetic tree improvement, and thinning.

With the passage of the Indian Self-Determination and Education Assistance Act in 1975 (P.L. 93- 638), the Quinault Nation was able to contract to provide badly needed rehabilitation and development services for reservation forest lands. Through establishment of our own forestry program, we have been able to gain access to professional, accountable forest management expertise which would pursue tribal goals for resource assessment and management, enhancement, and utilization.

Today, because of our initiatives, the support of Congress, and the policies of self-determination, we are in our second decade of increasing tribal participation in developing our natural resources. Our programs are respected by industry, state, and federal agencies. We have taken on the tasks of rebuilding and maintaining the forests on the Quinault Reservation, enforcing forest practices regulations, and addressing the land tenure problems created by the fractionated ownership of our allotted Reservation.

QUINAULT NATION'S FORESTRY PROGRAM NEEDS DEPENDABLE AND CONSISTENT FUNDING

It has been a struggle to maintain our Forestry Program over the years. We have suffered from the lack of dependable funding and the necessity to expend scarce tribal resources to defeat ill-advised initiatives of the former Administration. Historically, time consuming efforts have been required to restore status quo funding, usually in the form of Congressional supplemental appropriations or in restorations to the BIA's budget proposals.

Forest management activities do not lend themselves to simple proration or postponement of expenditures because of the seasonal nature of the projects, planning requirements, or simply the duration required for completion. Yet, we have often been forced to contract for Forestry Management for less than the full fiscal year due to the lack of sufficient funding for Tribal forestry programs after BIA priorities have been provided for. This has most commonly occurred when completion of Congressional appropriations processes has been delayed.

The lack of stability and reliability of funds also creates frustration and job insecurity for our managers and employees. Last year, the Quinault Forest Management Contract experienced three different contract termination dates. Each contract extension results in additional administrative costs and detracts from time better devoted to resource management. The adverse effects of this experience on employee morale and productivity cannot be overstated.

END OF YEAR TRANSFERS FROM BIA TO QUINAULT NATION'S FORESTRY PROGRAM DISGUISE FUNDING PROBLEMS

We have been frustrated in our attempts to maintain minimum funding levels for on-the-ground forest management activities, while Central Office, Area Office and Agency funding continues to escalate. Documentation of our experiences, provided to staff of this Committee last November, is attached for reference.

Large year-end transfers, among other funding complexities, tend to obscure or disguise the funding level problem of the Quinault Nation's Forestry Program. The details of each fiscal year become confusing or forgotten when only historical funding levels are reviewed. The misleading aggregated total is all too often used for comparison.

Many times, after experiencing funding shortages throughout the fiscal year, large monetary amounts have been shifted to our Forestry budget in the very last weeks. These monies come too late to be put to their most effective use and quite often must be carried over into the next contract year, causing a perceived blemish on the budgeting ability of tribal administrators and the capacity of our Forestry Program to produce. Year-end money has frequently been passed to us to complete projects unilaterally developed by the BIA or to perform unmet responsibilities of the BIA, rather than to further tribal priorities.

For example, $67,000 was transferred to the FY 1988 Forestry Management Contract; $22,000 for removal of the fallen Chow Chow bridge from the Quinault River,

$5,000 for a ground water model of the Taholah village water supply which would be affected by a timber sale proposed by the BIA, and $40,000 for forest road projects. Road project funds were transferred in the last four weeks of the fiscal year; the inability to accomplish this project in the time available required $21,000 to be carried over into FY 1989. The restricted use of these funds ignored previous tribal funding requests for projects and program needs.

QUINAULT NATION'S FORESTRY PROGRAM DENIED PARTICIPATION IN FUNDING INCREASES

The Quinault Nation's Forestry Management Program has not participated in funding increases to the same degree as BIA Forestry Programs. For example, in 1985, when Congress increased the Forest Development Add-On by 63% to reflect the toll of inflation, the Quinault Nation's Forestry Program received no increase in its base level. The BIA's budget and allocation process has consistently satisfied the needs and priorities of its own bureaucracy at the expense of funding for on-the-ground services and tribal programs.

Funding for our Tribal Forestry Management Program has decreased during the 1980's. When inflationary effects are considered, the difficulty of the Forestry Program to simply maintain program levels becomes even more apparent. At the end of FY 1987 and FY 1988, money was transferred to the Forestry Management Contract for pay cost increases, which allowed partial salary increases for employees. However, approval of the following fiscal year budgets contained no increases to the base reflecting the previously given pay cost increases. Over time, salaries adjusted for inflation become an increasingly larger portion of the stagnant yearly funding and monies available for supplies and other support are correspondingly reduced. Simply, there has never been a permanent increase in the funding level of our Forestry Program because of inflation.

The development of our Geographic Information System (GIS) is another example of tribal priorities being ignored and tribal access to increased funding being denied. Since 1982, we have attempted to develop a GIS with annual requests for funding assistance from the BIA without success. By 1985, the BIA realized the effectiveness of GIS for resource management and initiated the Integrated Indian Resource Information Program (IIRIP). Locally, the agency has since received funds for the development of this program and has been provided with expensive computer equipment which it does not have the expertise to operate. Meanwhile, annual tribal requests for funding to complete our GIS are ignored. Nationally, the IIRIP budget continues to increase while we continue our GIS effort without support.

FUTURE FOREST DEVELOPMENT ADD-ON FUNDING UNCERTAIN

Of great concern to the Quinault Nation is the potential end of the Forest Development program which has been annually supported by Congressional add-on appropriations since FY 1977. These funds constitute 80% or more of the funding for the Quinault Nation's Forestry Management Program. Upon elimination of the backlog, the Forest Development program may be ended, but the need to continue forest development activities will continue. There must be a funding source to continue to build and protect the forests of the future. The means to provide for continued operation of our Tribal Forestry Program does not presently exist.

If Forest Development Add-On funding is discontinued without the development of alternative funding sources, the future of the Quinault Nation's Forestry Management Program is uncertain at best. Other than providing minimal services funded by Forest Management Deductions (i.e. limited controlled burning and reforestation), professional resource management needs will go unmet. Beyond our Tribal Forestry Program there is a lack of expertise, manpower, desire, or capacity to manage our Reservation's resources in accordance with principles of stewardship and tribal priorities.

RESPONSIBLE MANAGEMENT - RESOURCE DEVELOPMENT, ATTENTION TO ECOLOGICAL CONCERNS, AND LAND CONSOLIDATION

The Quinault Department of Natural Resources, with divisions of Forestry, Fisheries and Environmental Protection, has assumed leadership in protecting the Reservation ecosystem. Historically, we have demonstrated our concerns on many resource protection issues by responding to poor logging practices which decimated the fisheries, enforcing protective measures for the Bald Eagle and their nesting sites, implementing forest practice standards, and initiating controlled burning to abate hazardous logging slash and to promote the viability of regeneration plantations. In more recent times, we continue to press for aggressive site preparation and planting activities, taking advantage of improved seed sources, professional forest road engineering and maintenance, responsible riparian management, and establishment of upland management areas for wildlife habitat.

The Quinault Reservation is the only major timbered reservation that was almost entirely allotted. The allotment process coupled with the Indian heirship problem and the alienation of Indian land as allowed by the Allotment Act has led to one of the most difficult resource management problems of any reservation. Management on an allotment basis for individuals often conflicts with total resource management and protection. To solve the problems created by fractionated and alienated ownership, the Quinault Nation has committed itself to consolidating the Reservation land base into a manageable forest property through a program of cooperative management and land acquisition. Congress recently supported our efforts by enacting the passage of P.L. 100-638 which restored 12,000 acres to our Reservation and provides for a source of funds for land consolidation.

As lands are acquired by the Tribe, the resources requiring trust management will increase. In the past, no additional funding has been provided to reflect responsibility for the increased acreage requiring management. The Quinault Nation has purchased over 13,000 acres of alienated land during the last two years. With support for land consolidation from P.L. 100-638 proceeds, it is anticipated more alienated land will be acquired.

The purpose of these consolidation efforts is to acquire and develop reservation lands to insure that a commercially viable forest will exist in the future. Many of the acquired lands are in need of substantial rehabilitation and silvicultural treatment. When we purchased the 13,000 acres of alienated land we had no choice but to take the land in fee status because of mortgage liens. Over 3,000 acres of this land requires substantial rehabilitation and reforestation. Without treatment this land could remain poorly utilized for the length of the mortgage and site conditions will deteriorate; not only will years of productivity be lost, but costs of rehabilitation will also increase. Since the land is not in trust status, the BIA will not permit us to use appropriated funds for management and treatment. In our view, the trust responsibility accompanying the government-to-government relationship between the United States and the Quinault Nation does not depend upon who holds title to tribal property. There is a need for increased funding to manage and rehabilitate lands as they are acquired, regardless of whether or not title to the land is held in trust by the United States.

Developing and protecting resources for the benefit of Indian people, meeting environmental responsibilities, and addressing land tenure problems caused by the allotment of the entire Reservation are the elements of responsible resource management. Those elements are sorely lacking in current management by the BIA.

QUINAULT NATION'S FOREST MANAGEMENT PROGRAM REQUIRES THE MONEY AND MANPOWER TO MANAGE THE RESOURCES

The Quinault Indian Nation's Forest Management Program needs dependable and increased levels of funding, manpower and financial support to insure proper management of the natural resources of the Reservation's resources, meet our management needs, and address tribal priorities. Adequate base level funding for our Tribal Forestry Program must be provided to establish a stable and reliable source of continued support.

In the recent past, our Reservation's forests supported thousands of jobs, produced billions of board feet of timber, and generated millions of dollars to the regional economy.[1] Unfortunately, decades of neglect have left behind a legacy of impoverishment and immense resource management challenges. With investment in our lands and our Forestry Program, we are confident that our forests can once again become a prominent contributor to the economic health of our people and the region.

---

[1] According to a Forest Economist from the University of Washington, the timber resources from our Reservation contributed over 27% of the timber harvested, directly and indirectly supported 18% of the regional employment, and 14% of the personal income in Grays Harbor County in 1977.

Only the Quinault Nation can fully appreciate the importance of properly managing our Reservation's resources. Our very survival as a people depends upon our resources. They represent both our heritage and our future.

Our forest management program is an essential part of our goal of restoring the productivity of our Reservation's resources and reducing the future dependency of our people on social welfare programs. It is a key to our ability to shape the future, to achieve our vision of economic and political self-determination.

Quinault Indian Nation
POST OFFICE BOX 189 ◻ TAHOLAH, WASHINGTON 98587 ◻ TELEPHONE (206) 276-8211

April 2, 1987

QUINAULT TRIBAL FORESTRY PROGRAM

Background

In 1972, the Quinault Tribal Forestry Program began as part of a pilot project, the Quinault Resources Development Project. This project investigated both Fisheries and Forestry. By FY77, the Tribe was quite aware of the inadequancies of the Bureau of Indian Affairs' (BIA) passive forestry management practices that had persisted throughout the history of its trusteeship; inadequacies that persisted still. The Tribe concluded that it was vital to organize and maintain its own Forest Management Program, separate from the BIA. The BIA's inadequate forest management practices on the Quinault Reservation have been well documented and are currently under litigation in Mitchell vs. U.S. In FY77, the Quinault Forestry Program became a separate, formal department, funded through 93-638 contracts.

From 1977 through 1980, the BIA opposed at the local Agency and Area levels, most of the progressive forestry initiatives implemented by the Tribe. The Tribe thwarted this oppositon through proven State-of-the-Art management techniques and by circumventing the Agency and Area, whenever necessary, in administration and allocation of funds for the contract. The visit of then Secretary of Interior Cecil Andrus in 1979 brought the Quinault forestry situation to the foreground and effectively silenced local BIA opposition.

1980 - 1982

By 1980 working relationships between the Tribe and the Agency-Area had seemingly improved to the point where the Tribe agreed to permit the two tiers of the BIA, the Agency and Area offices, to administrate the 638 contract and granted them some discretionary authority over the Tribal forestry allocation from appropriated monies. This was also the first year the Tribe was given the opportunity to use Timber Administrative Fee collections in its Forestry Management program.

Between FY80 and the end of FY82, the Tribal forestry funding base remained relatively stable. No funding increases occurred, but the BIA essayed only token attempts to decrease the Tribe's forestry funding.

1983

In February of 1983, the BIA informed the Tribe that its FY83 93-638 Forestry Management contract would be reduced by $100,000 and that further reductions were planned for FY84.

In order to protect its program and the significant progress made under it, Tribal representatives appealed to Chairman Yates of the House Interior Appropriations Committee and to members of the Washington State Congressional delegation. Congress responded by providing the $100,000 through a supplemental appropriation in FY83. It also entered instructive language in the FY84 appropriation which provided for full funding of the Quinault Tribal forestry program.

1984

In spite of Congressional directives, the BIA informed the Tribe in late October 1983, there would be a $84,700.00 shortfall in funding the Tribe's FY84 93-638 forestry contract. The BIA also said the shortfall for FY85 and beyond would be at $115,700.

Once again, the Tribe was forced to commit much time and manpower to justify its forestry program and its need for the requested funding levels. Not until late September 1984 did the Tribe receive the final modification from the Bureau which restored the $84,700 shortfall - sixteen days before the end of the fiscal year for which the money was needed.

1985

Even though Congress ultimately increased the Bureau's Forest Development appropriation for FY85, initially the BIA still forced the Tribe to submit a FY85-638 Forestry contract at a reduced level - $115,700 short of the original request. Because of the increased Forest Development Appropriation, the BIA was unable to justify its proposed reduction in the Quinault Forestry contract. The BIA restored the $115,700 to the FY85 contract in December, 1984.

1986

By FY86, the BIA's attitude towards Tribal Forestry Programs had become obsessive at budget time. For this fiscal year, the BIA unveiled its newest strategy for Tribal forestry programs: in its initial appropriation request and budget justification, it asked for cuts in Forest Development funding - the funding area used predominantly for and by Tribal forestry programs.

Again, Congress responded favorably to Tribal requests to restore the Forest Development monies. It directed the BIA to provide the same amount of Forest Development monies as in FY85. While the BIA acquiesced, it refused to provide adequate contract support monies, even though the Quinault Nation's indirect rate had been approved by the Inspector General and the BIA, itself. To cover the shortfall of contract support dollars, the Quinault Nation had to shift direct program dollars into indirect.

Ever since FY82 and through FY86 into FY87, the Quinault Indian Nation has struggled against the Bureau, merely to maintain the status quo of its forestry program. Yet, from FY82 to FY86, the Congressional appropriations for BIA Forestry, the Portland Area Office forestry allocation, and the Olympic Peninsula Agency allocation all increased.

	Congressional Appropriations	PAO Allocation	OPA Allocation	Total QIN Forest Allocation	Amt. Available Direct Forestry Expenditures
FY82	$23,272,933	$ 9,876,174	$2,176,500	$1,191,606	$800,000
FY86	$33,801,000	$14,638,400	$2,753,500	$1,196,700	$767,573
% Difference:	+45.2	+48.2	+26.5	+0.4	-4.1

1987

FY87's problems began when the BIA requested a $4.2 million decrease in Forestry appropriations; a percentage decrease of 12.5% from the FY86 appropriated level. BIA logic translated this 12.5% decrease into a 31.4% decrease in the Quinault Tribal forestry 93-638 contract from FY86 to FY87. Congress again restored the BIA FY87 forestry appropriation to a level comparable to FY86.

However, the BIA shifted large amounts of this funding from Timber Sale Administration and Forest Development - funds which normally go directly into Tribal 638 contracts - to increase the funding bases for its own Central and Area office operations and the Tribe/Agency category (used by the BIA at the Agency level).

In the shuffle, the BIA reduced the Quinault Tribal forestry contract requested allocation by $103,000, an amount vital to maintain the mere status quo.

In early March of this year, Tribal representatives met with the Central Office of the Bureau and various concerned congressmen. Since these meetings, the Quinault Tribal Forestry Director has been verbally assured by the Olympic Peninsula Agency that the $103,000 will now be available for the Tribe's FY87 forestry contract.

The Present

The Quinault Nation believes that the FY88, BIA forestry appropriation request is obviously a prelude to Mr. Swimmer's ultimate plan of terminating federal funding for forest management activities on Indian reservations.

Mr. Swimmer believes that Indian tribes (or individuals in the case of allotted reservations) should eventually bear the total expense for the management of Indian timberlands.

Mr. Swimmer's actions are a direct attack on the federal government's basic trust responsibilities toward Indian people and a violation of time-honored treaty rights.

The ramifications of Mr. Swimmer's FY88 Forestry initiative have already begun. The Olympic Peninsula Agency has been told to prepare for the possible elimination of 12 forester positions and 15 forest technician positions, which comprise approximately one-half of the professional staff positions of OPA.

The Quinault Tribal Forestry allocation appears to be programmed to reduce direct program expenditures from $820,000 to $261,000 or a $559,000 reduction. In addition, contract support dollars are to be reduced to a 15% level, reducing the indirect cost allocation by $420,000 for a total reduction of $979,000 in FY88. These losses, coupled with the Tribe's further loss of the use of Timber Administrative Fees will effectively terminate the Quinault Tribal Forestry Program.

The Quinault Indian Nation is proud of the accomplishments of its Forestry Program. In the eleven fiscal years since it started with 93-638 contracts, the Nation has:

- performed forest land inventories of 130,000 acres of trust land. In addition, reinventories continue annually.
- planted 15,800 acres
- site preparation of 6,200 acres
- thinning of 1,000 acres
- adoption and implementation of Tribal Forest Practices Regulations
- development and pursual of a Tree Improvement program
- development of a computerized geographic information system and resource data base
- development of a forestry information program which educates and keeps Tribal people informed about their natural resources
- maintained and improved a large number of Reservation roads

And, certainly not least important, Quinault forests continue to contribute to the economy of the Twin Harbors region, whose unemployment rate in January 1987 was 13.4, well above the national average for the same month of 7.3%. It has been determined that nearly 20% of Forest Products employment in the Twin Harbors Region is attributed to the harvest of Indian Timber. Together, the Tribal forestry activities and the timber sale activities performed by the Olympic Peninsula Agency are vital to the economy of this region. Mr. Swimmer's initiative would substantially reduce unto eliminate this employment base, further depressing the economy of the Twin Harbors Region.

In addition, it is estimated that approximately 10% of the total log volume exported from Grays Harbor is from Indian timber. A reduction in the Indian timber volume harvested will have a direct detrimental impact on the U.S. balance of trade.

The Quinault Nation requests the Administration's FY88 BIA Forestry initiative be rejected. The Administration's request constitutes a blatant violation of the U.S. Government's trust responsibility to Indian people. The Quinault Nation requests a total restoration of Forestry appropriations to at least the FY87 funding level and, even before the Congressional appropriation for FY88 is passed, the Nation requests that Congress prevent the Administration-BIA from implementing the staffing reductions currently called for in their FY88 Forestry initiative.

Finally, because of the past practice of the BIA of attempting each fiscal year to decrease the Quinault Tribal Forestry allocation, while continuing to increase Bureau forestry program funding, the Quinault Nation requests instructive language which will annually earmark the Quinault Tribal forestry allocation and remove this discretionary authority regarding the Tribal allocation from the BIA.

Quinault Indian Nation
POST OFFICE BOX 189 ☐ TAHOLAH, WASHINGTON 98587 ☐ TELEPHONE (206) 276-8211

November 14, 1988

Addendum to the April 2, 1987 memo that explained the funding problems of the Quinault Tribal Forestry Program in chronological order.

FY88

As we predicted in April 1987, the BIA initially allocated the Tribe only $253,100 for FY88 direct forestry program expenditures under its 93-638 forestry management contract. This amount was a mere 29% of the Tribe's request. In order to prevent needless personnel layoffs on October 1, 1987, the Tribe chose to shorten the effective dates of the contract to October 1, 1987 through December 25, 1987 instead of trying to spread the meager amount of $253,100 over the entire twelve months fiscal year.

From the start of FY88 through the next 12 months, the BIA doled out piecemeal additional monies to the Tribe, as follows:

- on November 20, 1987, the BIA informed the Tribe that an additional $580,000 will be allocated to its forestry management 638 contract. Since indirect monies had not yet been provided, the Tribe could only extend its 638 contract from December 25, 1987 to April 30, 1988, with this additional allocation.
- in April 1988, the BIA allocated an additional $154,196.00 to the Tribe with an assurance that indirect monies would eventually be provided. The Tribe, therefore, could extend its Forestry Management contract through September 30, 1988 at a $849,546.00 direct program spending level.
- in June, the BIA allocated an additional $22,000.00 to the Tribe for a specific emergency bridge removal.
- in August, the BIA allocates another $45,000.00 with the understanding it will be used specifically for road maintenance.
- finally in September, the BIA allocated another $7,000.00 is allocated to the Tribe for, presumably, a cost of living increase.

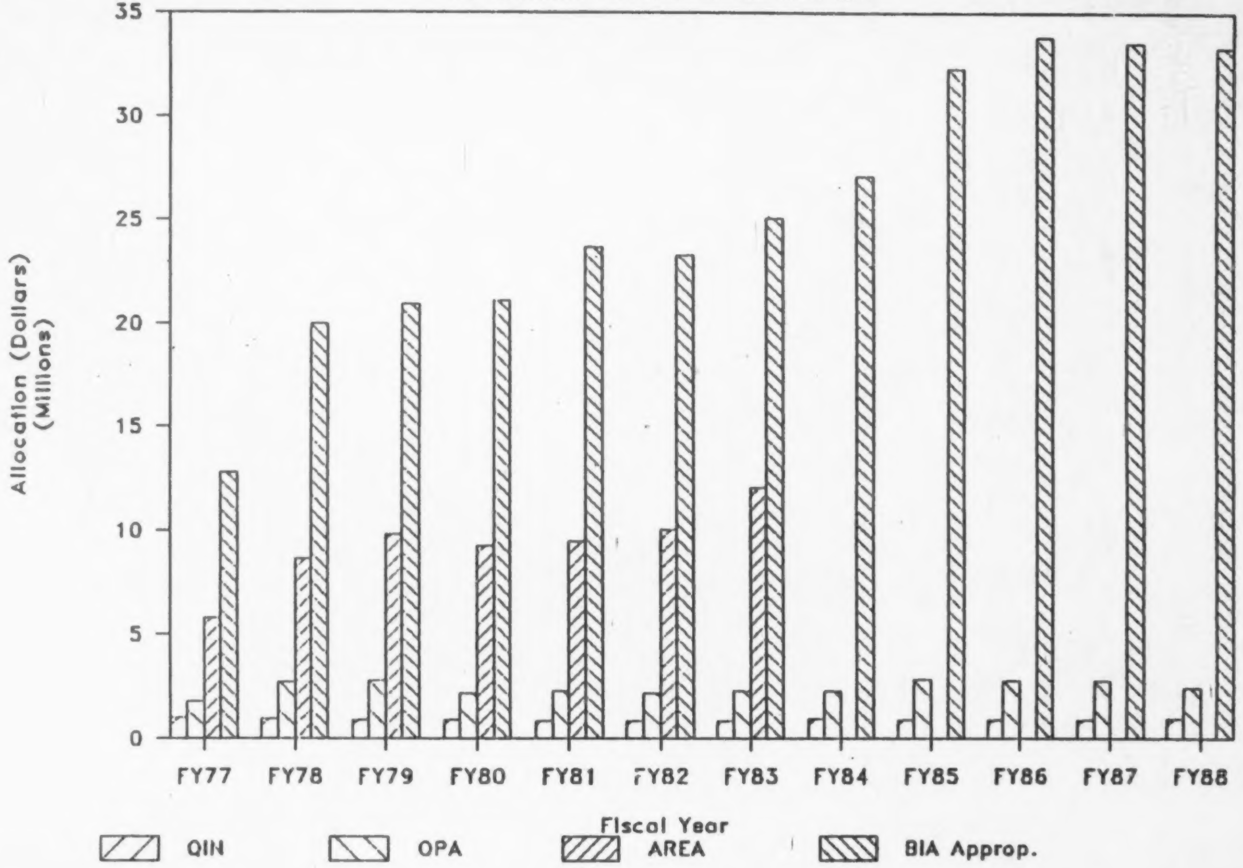
This type of piecemeal allocation makes it extremely difficult for the Tribe to maintain a sustained, stable forestry management program. Longer range planning is virtually impossible. The BIA refuses to allocate sufficient funds earlier in the fiscal year to allow planning for the use of the funds. Instead, the BIA makes large allocations late in the fiscal year, forcing the Tribe to carry the money over or to perform short, specific projects.

FY89

FY89 began as past fiscal year programs. The BIA allocated less than the tribal request and less than allocations of previous years. Once again, the Tribe will be forced to expend unnecessary time and manpower in attempts to bring up the BIA appropriation and the tribal allocation to an adequate level.

APPROP. OR ALLOC. OF FORESTRY MONIES

TO VARIOUS LEVELS OF BIA AND QIN



APPROPRIATION OR ALLOCATION OF FORESTRY MONIES TO VARIOUS LEVELS OF BIA AND QIN

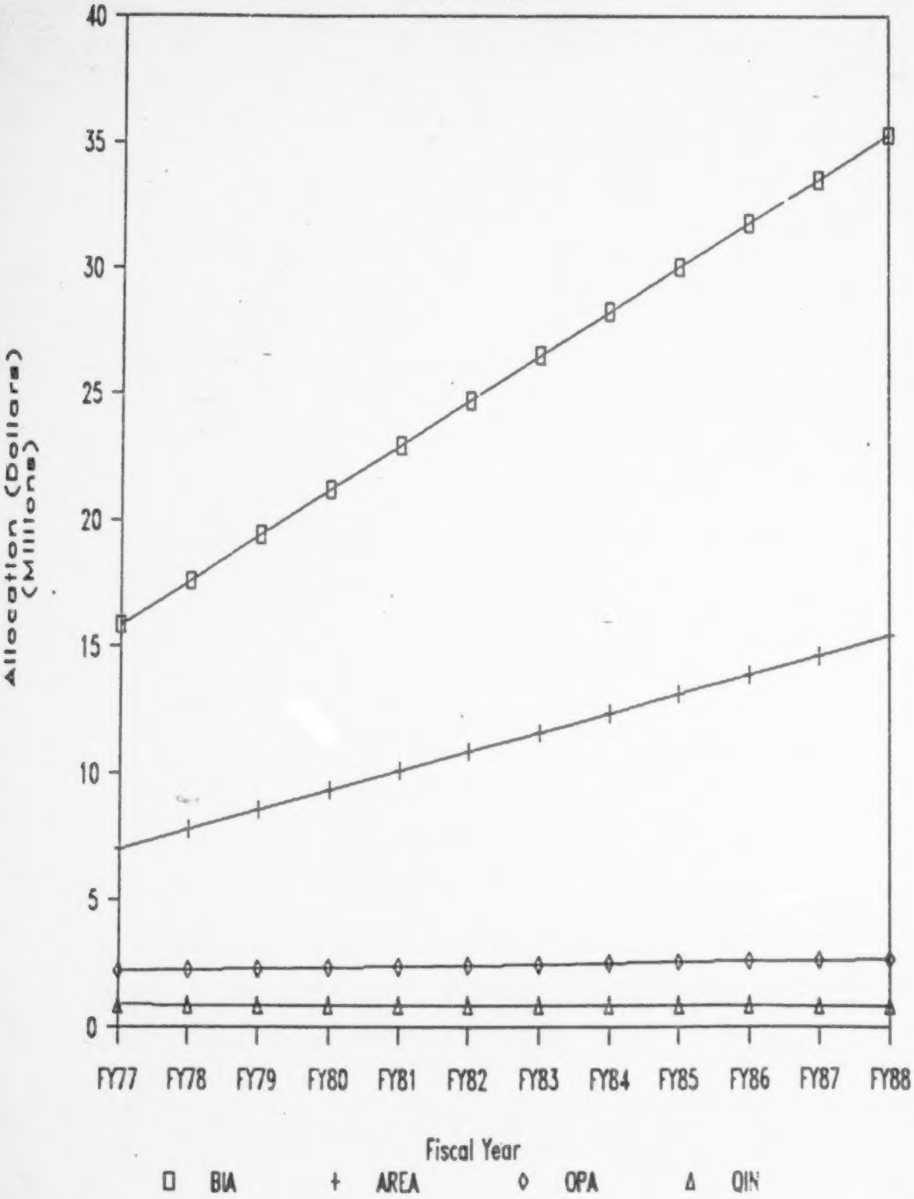
Fiscal Year	Congress. Approp.	Portland Area Allocation	WWA. or OPA. Allocation	Quinault Nat. Allocation
FY77	$12,772,800	$5,786,900	$1,773,100	$974,000
FY78	$19,986,648	$8,654,800	$2,692,000	$942,000
FY79	$20,962,611	$9,808,000	$2,743,300	$875,000
FY80	$21,137,074	$9,249,600	$2,141,900	$850,000
FY81	$23,671,835	$9,503,600	$2,243,100	$800,000
FY82	$23,272,933	$10,073,400	$2,176,500	$800,000
FY83	$25,119,000	$12,039,900	$2,282,100	$795,000
FY84	$27,090,000	N.A.	$2,268,200	$945,700
FY85	$32,315,000	N.A.	$2,855,300	$855,200
FY86	$33,801,000	N.A.	$2,753,500	$882,907
FY87	$33,504,000	N.A.	$2,782,200	$884,586
FY88	$33,332,000	N.A.	$2,453,500	$907,100

REGRESSION OF FUNDING

	Regression Congress. Approp.	Regression Portland Area Allocation	Regression WWA. or OPA. Allocation	Regression Quinault Nat. Allocation
	$15,856,057	$7,021,050	$2,197,401	$890,173
	$17,624,121	$7,781,471	$2,239,763	$887,588
	$19,392,185	$8,541,893	$2,282,125	$885,004
	$21,160,249	$9,302,314	$2,324,487	$882,419
	$22,928,313	$10,062,736	$2,366,849	$879,835
	$24,696,376	$10,823,157	$2,409,211	$877,250
	$26,464,440	$11,583,579	$2,451,573	$874,665
	$28,232,504	$12,344,000	$2,493,934	$872,081
	$30,000,568	$13,104,421	$2,536,296	$869,496
	$31,768,632	$13,864,843	$2,578,658	$866,912
	$33,536,696	$14,625,264	$2,621,020	$864,327
	$35,304,760	$15,385,686	$2,663,382	$861,743
Constant	14,087,993	6,260,629	2,155,039	892,757
Std Err of Y Est	1,913,878	997,460	313,381	61,785
R Squared	0.9243	0.7650	0.2072	0.0244
No. of Observations	12	7	12	12
Degrees of Freedom	10	5	10	10
X Coefficient(s)	1,768,064	760,421	42,362	(2,585)
Std Err of Coef.	160,047	188,502	26,206	5,167

REGRESSIONS OF FUNDING

FY77 - FY88



LAW OFFICES
SONOSKY, CHAMBERS & SACHSE
SUITE 1000
1250 EYE STREET, N.W.
WASHINGTON, D.C. 20005
(202) 682-0240
TELECOPIER (202) 682-0249

MARVIN J SONOSKY
HARRY R SACHSE
REID PEYTON CHAMBERS
WILLIAM R PERRY
LLOYD BENTON MILLER
DONALD J SIMON
DOUGLAS B L ENDRESON*
MARY V BARNEY
ANNE D NOTO
SAMUEL L WINDER**

OF COUNSEL
LOFTUS E BECKER, JR

*ADMITTED IN WISCONSIN
**ADMITTED IN NEW MEXICO

ANCHORAGE OFFICE
SUITE 700
900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501

(907) 258-6377
TELECOPIER (907) 272-8332

LLOYD BENTON MILLER
JILL A. DE LA HUNT

OF COUNSEL
ROGER W DUBROCK

89 JUN -5 PM 1:43

June 2, 1989

Honorable Dennis DeConcini
328 Senate Hart Office Building
Washington, D.C. 20510-0301

Honorable John McCain
111 Senate Hart Office Building
Washington, D.C. 20510-0302

Honorable Thomas A. Daschle
317 Senate Hart Office Building
Washington, D.C. 20510-4101

Dear Senators DeConcini, McCain and Daschle:

The staff of your special subcommittee on investigations has asked that I write to discuss the historic origins and present elements of the federal trust responsibility to American Indians. I am honored to be requested to do so, and set forth my thoughts below.

As you know, I am a partner in Sonosky, Chambers and Sachse, 1250 Eye Street, N.W., Washington, D.C. 20005, a law firm representing Indian tribes and tribal organizations. I have also served as a Professor at UCLA School of Law, a Visiting Professor at the Tulsa University College of Law, and an Adjunct Professor at Georgetown University Law School, teaching Federal Indian Law. From 1973 to 1976, I was Associate Solicitor for Indian Affairs at the Interior Department. I also served on the Board of Editors which revised Felix S. Cohen's Handbook of Federal Indian Law in 1982.

The courts of the United States have consistently recognized and reaffirmed the special trust relationship of the United States to Indian tribes and their members, as, generally, has Congress and the Executive. Modern court decisions have tested the constitutionality of acts of Congress by whether they "can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians."[1] That unique obligation is deeply rooted in the Nation's history.

The United States Supreme Court first discussed the trust obligation in Chief Justice John Marshall's early decisions dealing with the Cherokee Nation.[2] The Court held that Georgia's laws had no force and effect in Cherokee territory because the Cherokee Nation was a "distinct political society." Speaking for the Court, Chief Justice Marshall stated that "the condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence . . . , marked by peculiar and cardinal distinctions which exist nowhere else." While Chief Justice Marshall held that Indian tribes are not independent foreign nations, he concluded that they "may, more correctly, perhaps, be denominated domestic dependent nations." Their "relation to the United States resembles that of a ward to his guardian," the Chief Justice stated.

Chief Justice Marshall's Cherokee decisions considered that the unique trust relationship derived from treaties between the United States, or the British Crown before it, and the Cherokee Nation, and from federal Indian statutes like the Indian Trade and Intercourse Act. Those treaties and statutes, in terms of their express language, protected Indian lands and natural resources from alienation. Then, as is common today, the beneficial ownership to the land was the Indians. The United States held fee title in trust for the Indians, a trust guaranteed in the treaties and by Acts of Congress.

In the 150 plus years since Chief Justice Marshall wrote, most cases elucidating the trust relationship have dealt with trust property rights -- chiefly rights to land, rights to the use of water, rights to mineral resources, rights to timber and rights to hunt and to fish. These cases have set a high standard; the Government's conduct with respect to Indian lands and resources "should . . . be judged by the most exacting fiduciary standards."[3] The Supreme Court has held that federal officials have "moral obligations of the highest responsibility and trust,"[4] and are "bound by every moral and equitable consideration to discharge its trust with good faith and fairness."[5] More specifically, the cases have held that the Federal Government may not "give the tribal lands to others, or . . . appropriate them to its own purposes."[6] In general, the courts have held that the United States should be judged at least by the standards and principles of law as would be applied to an ordinary fiduciary in its dealing with Indian property. This has been held to include a duty of care,[7] a duty to make property productive,[8] and a duty of loyalty.[9]

---

[1] Morton v. Mancari, 417 U.S. 535, 555 (1974); Delaware Business Committee v. Weeks, 430 U.S. 73 (1977).

[2] Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831).

Of course, these duties have not always been honored. Sometimes, for example, there has been a conflict of interest between Indian rights to resources -- such as land, water, timber, and minerals -- and rights to hunt and fish, and the claims and demands of other federal agencies -- national parks, fish and wildlife refuges, public dams and water projects, and the like.

Where conflicts of interest between Indian rights and other public projects are presented, special obligations of trust should influence and control the decisions of the Executive Branch. If the United States decides to build a dam which may injure fish resources, or to take public lands within a national park or protected wildlife refuge, that is of course a straight public policy decision. Private interests will support or oppose the policy, but ultimately the Government as a policy maker must reach the decision. But when Indian rights are involved, the United States is a trustee for invaluable Indian property interests. When the United States subordinates Indian rights to its conflicting public policy responsibilities, a breach of trust occurs, at least where there is a reasonable and legitimate support for the Indian position. This is because a trustee should subordinate his own interests to those of his trust beneficiary.

---

[3] Seminole Nation v. United States, 316 U.S. 286, 297 (1942).

[4] Ibid.

[5] United States v. Payne, 264 U.S. 446, 448 (1924).

[6] E.g., United States v. Creek Nation, 295 U.S. 103, 110 (1935).

[7] Menominee Tribe v. United States, 101 Ct. Cl. 10, 19-20 (1944).

[8] Manchester Band of Pomo Indians, Inc. v. United States, 363 F. Supp. 1238, 1245 (N.D. Cal. 1973).

[9] Navajo Tribe v. United States, 364 F.2d 320, 322-24 (Ct. Cl. 1966)

When the United States rules against Indian rights in this kind of situation, it is guilty of a prohibited conflict of interest. The Supreme Court unfortunately ruled in the Pyramid Lake case[10] that the Executive may sometimes have the power to override a reasonable and legitimate Indian position -- if, for example, Congress has authorized the Executive to "wear two hats" -- and act in favor of the non-Indian project. However, this kind of action is morally odious, subjects the United States to legal liability, and ought to be avoided.

While property-related duties have been the direct concern of most court holdings, the courts have also made it clear that the central purpose of the trust relationship is, as Chief Justice Marshall explained, to protect the tribes' existence as distinct political societies. Indeed, probably the primary purpose of protecting the lands and natural resources is to allow the tribes to function as governments and to exercise political autonomy. Without a protected land base, it is doubtful that tribes could long function as distinct political societies.

Thus, the result of the trust responsibility is a government-to-government relationship between tribes and the Unites States whereby the United States protects the authority of Indian tribes to "make their own laws and be ruled by them."[11] For this reason, courts have held that the tribes' rights to self-government are protected by federal law even without a specific federal statute doing so, and have held that state laws that would interfere with tribal self-government are for that reason alone preempted because they conflict with overriding law and policy.[12]

---

[10] Nevada v. United States, 463 U.S. 110 (1983).

[11] See Williams v. Lee, 358 U.S. 217, 221 (1959).

Because the central purpose of the trust responsibility is to protect the political autonomy and self-governing status of tribes, I believe there is no conflict between the trust responsibility and the policy of tribal self-determination. Both strive toward the same goal. The trust responsibility does not exist because Indian tribes are some kind of incompetent or baby needing the paternalistic control of a guardian. Rather, it exists because of the federal promises to foster and preserve tribal self-government and the tribal existence as a distinct political society. That was true in Chief Justice Marshall's day and it is true today.

I hope this brief explanation of trust responsibility to Indians is of help to the special subcommittee as you continue your investigation into the specific failures of the executive branch to protect Indian rights to natural resources. Please let me know if I can be of further help to you in this important endeavor.

Kind personal regards.

Sincerely,

Reid Cl C

Reid Peyton Chambers

RPC:bnm

---

[12] E.g., White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980).